TITLE 12

Chapter 12:06

BROADCASTING SERVICES ACT

Act 3/2001, 22/2001, 26/200, 6/2003.

ARRANGEMENT OF SECTIONS

ACT

An Act to provide for the functions, powers and duties of the Broadcasting Authority of Zimbabwe; to provide for the constitution of the Authority; to provide for the planning, management, allocation, regulation and protection of the broadcasting frequency spectrum and the regulation and licensing of broadcasting services and

systems; to provide for programme standards; to regulate and license signal carriers; to encourage and develop the creative arts through broadcasting content standards; to create a sense of national identity through broadcasting services; to create a Broadcasting Fund to help finance local broadcasting and for related purposes; and to provide for matters incidental to or connected with the foregoing.

ENACTED by the President and the Parliament of Zimbabwe.

[Date of commencement: 4th April, 2001 – but see section 47(4).]

PART I

PRELIMINARY

1 Title

This Act may be cited as the Broadcasting Services Act [Chapter 12:06].

2 Interpretation

(1) In this Act—

"advertising agent" means a person whose sole or principal business is the making or placing of commercial advertisements on behalf of others;

"apparatus", in relation to broadcasting apparatus, means apparatus constructed or adapted for use in transmitting or receiving broadcasting services;

"applicant" means an applicant for a licence;

"Authority" means the Broadcasting Authority of Zimbabwe established by section three;

"Board" means the Broadcasting Authority of Zimbabwe Board established by section four;

"broadcasting licence" means a broadcasting licence issued in terms of section ten;

"broadcasting service" means any service which delivers television or radio programmes to persons having equipment appropriate for receiving that service, whether the delivery is effected by means of or uses the radiofrequency spectrum, cable, optical fibre, satellite or any other means or a combination of those means, and includes any of the services referred to in paragraphs (a) to (j) of subsection (2) of section seven;

"broadcasting service bands" means—

(a) that part of the electromagnetic radiofrequency spectrum which is allocated to the Authority by the Postal and Telecommunications Authority for planning and allocation for broadcasting purposes in terms of this Act; and

(b) designated to be such by the Minister by notice in the Gazette;

"broadcasting station" means a radio or television transmitting station used for the purposes of carrying on a broadcasting service;

"broadcasting system" includes a signal carrier or radio transmitting station used for the purpose of transmitting a broadcasting service;

"cable broadcasting service" means a broadcasting service which transmits programmes by means of a telecommunication service, other than a radiocommunication service, as defined in the Postal and Telecommunications Act [Chapter 12:05], for reception at two or more places, whether simultaneously or at different times;

"commercial broadcasting service" means a free-to-air (radio or television) broadcasting service operated for profit or as part of a profit-making enterprise which—

(a) is intended or appears to be intended to appeal to the general public; and

(b) is capable of being received by commonly available equipment; and

(c) otherwise complies with any classification criteria that may be applicable to such a service in terms of subsection (2);

"commercial radio broadcasting service" means a commercial audio- broadcasting service;

"commercial television broadcasting service" means an audio- visual commercial broadcasting service;

"community broadcasting service" means a free-to-air (radio or television) broadcasting service not operated for profit or as part of a profit-making enterprise which—

(a) provides programmes—

(i) for community purposes; and

(ii) is capable of being received by commonly available equipment; and

(b) does not broadcast programmes or advertisements on behalf of any political party; and

(c) otherwise complies with any classification criteria that may be applicable to such a service in terms of subsection (2);

"control" includes control as a result of or by means of trusts, agreements, arrangements, understandings or practices whether or not having legal or equitable force and whether or not based on legal or equitable rights;

"Corporation" means the Posts and Telecommunications Corporation as defined in the Postal and Telecommunications Act [Chapter 12:05], and includes any successor company of the Corporation formed in terms of that Act;

"datacasting service" means an information service that delivers information, whether in the form of data, text, speeches, images or any other form, to persons having equipment appropriate for receiving that information, where the delivery of the service uses the broadcasting service bands;

"diffusion service" includes the dissemination—

(a) by means of any conducting medium of the whole or any part of writing, signs, signals, pictures, impulses or sounds broadcast by a broadcasting service; or

(b) of music, speech, pictures or other data for information, education or entertainment purposes by means of any conducting medium connected to two or more items of apparatus specifically designed for the reproduction of sound, pictures or data; or

(c) of teletext and vertical blanking intervals;

"foreign donation or contribution" means a donation or contribution made otherwise than for commercial reasons alone by—

(a) a person who is not a permanent resident or citizen of Zimbabwe domiciled in Zimbabwe; or

(b) a company which is not incorporated in Zimbabwe or, if so incorporated, does not carry on business in Zimbabwe; or

(c) any association of persons, whether incorporated or unincorporated, that does not consist exclusively of permanent residents or citizens of Zimbabwe, domiciled in Zimbabwe.

[substituted by Section 10 of Act 26 of 2001, with effect from the 1st February, 2002, and amended by Act 6 of 2003 with effect from the 19th September, 2003.]

"free-to-air broadcasting service" means any broadcasting service transmitted otherwise than by means of an encoded signal;

"International Telecommunication Constitution" means the International Telecommunication Constitution and Convention of the International Telecommunication Union signed in Geneva on the 22nd December, 1992, and the Regulations annexed thereto, or any other international telecommunication convention or agreement to which Zimbabwe may be a party and any regulations annexed thereto;

"licence" means a broadcasting licence or a signal carrier licence;

"licence area" bears the meaning assigned to that term in paragraph 1 of the First Schedule;

"licensee" means a holder of a broadcasting licence or signal carrier licence;

"Minister" means the Minister of State for Information and Publicity in the President's Office or any other Minister to whom the President may, from time to

time, assign the administration of this Act;
"member" means a member of the Board;
"national broadcasting service" means a free-to-air community or commercial broadcasting service whose licence area is the whole of Zimbabwe;
"newspaper" means a newspaper, journal, periodical or magazine;
"open narrowcasting service" means a broadcasting service, including a diffusion service—

(a) which is not made available to persons on payment of any subscription fee; and

(b) the reception of which is limited by reason of—

(i) being targeted to any special interest group or not being otherwise intended to appeal to the general public; or

(ii) being intended only for reception in particular locations, including arenas or business premises; or

(iii) being provided during a limited period or to cover a special event;

or is limited for some other reason;

and

(c) otherwise complies with any classification criteria that may be applicable to such a service in terms of subsection (2);

"operate", in relation to—

(a) operating as a signal carrier, means carry or distribute signals on behalf of any broadcasting service; and

(b) operating a signal transmitting station, means install, work, maintain, develop or hire any apparatus comprising the signal transmitting station;

"political party or organisation" includes any group or organisation whose objective is the furtherance of the election of a person or persons to public office or the removal of a person or persons from such office;
"Postal and Telecommunications Authority" means the Postal and Telecommunications Authority established by section 3 of the Postal and Telecommunications Act [Chapter 12:05];
"public broadcaster" means the Zimbabwe Broadcasting Corporation referred to in section 3 of the Zimbabwe Broadcasting Corporation Act [Chapter 12:01] or any other broadcasting entity established by law which is wholly owned or controlled by the State;
"railcasting" means the broadcasting of pre-recorded programmes for reception by passengers of any railway service;
"roadcasting" means the broadcasting of pre-recorded programmes for reception by passengers of any public service vehicle as defined in the Road Motor Transportation Act [Chapter 13:15];
[amended by Act 6 of 2003 with effect from the 19th September, 2003.]
"securities", in relation to a body corporate, means shares, stock, debentures, bonds and other securities which entitle the holder of the securities to vote at meetings of, or exercise any control over, the body corporate;
"signal carrier" means a signal transmitting station that includes the apparatus for the transmission of a radio or television broadcasting service;
"signal transmitting station" means a radio transmitting station as defined in the Postal and Telecommunications Act [Chapter 12:05] or other station which is used for the purpose of transmitting a broadcasting service;
"subscription broadcasting service" includes a subscription satellite, subscription narrowcasting and subscription cable broadcasting service;
"subscription cable broadcasting service" means a broadcasting service, including a diffusion service, which—

(a) is made available to members of the general public on payment of a subscription fee, whether such payment is periodical or otherwise, and whether or not such fee is charged on its own or forms part of a fee for multiple services including

the broadcasting service; and

(b) provides programmes intended, or that appear to be intended, to appeal to the general public; and

(c) otherwise complies with any classification criteria that may be applicable to such a service in terms of subsection (2);

"subscription narrowcasting service" means a broadcasting service, including a diffusion service—

(a) which is made available to persons on payment of a subscription fee, whether such payment is periodical or otherwise, and whether or not such fee is charged on its own or forms part of a fee for multiple services including the narrowcasting service; and

(b) the reception of which is limited by reason of—

(i) being targeted to any special interest group or not otherwise intended to appeal to the general public; or

(ii) being intended only for reception in particular locations, including arenas or business premises; or

(iii) being provided during a limited period or to cover a special event;

or is limited for some other reason;

and

(c) otherwise complies with any classification criteria that may be applicable to such a service in terms of subsection (2);

"subscription satellite broadcasting service" means a broadcasting service which transmits programmes by satellite, whether by means of encoded or unencoded signals and—

(a) which is made available to persons on payment of a subscription fee, whether such payment is periodical or otherwise, and whether or not such fee is charged on its own or forms part of a fee for multiple services including the broadcasting service; and

(b) otherwise complies with any classification criteria that may be applicable to such a service in terms of subsection (2);

"webcasting service" means a computer-mediated broadcasting service.

(2) The Minister may, by notice in the Gazette—

(a) determine additional criteria to those specified in the definition of any broadcasting service in terms of subsection (1); or

(b) clarify the criteria specified in the definition of any broadcasting service in terms of subsection (1); or

(c) for the purpose of distinguishing between categories of broadcasting services—

(i) determine other categories of broadcasting services; or

(ii) determine different criteria or make different clarifications for radio services and television services.

(3) Any reference in this Act to—

(a) the provision, reception or transmission of a broadcasting service includes the provision or reception within, or transmission to, from or within, Zimbabwe of such service transmitted by satellite or any other means;

(b) the operation in Zimbabwe of a broadcasting system, includes the operation in Zimbabwe of broadcasting apparatus that is connected to a broadcasting system operated outside Zimbabwe;

(c) the operation of a broadcasting system includes the operation of a telecommunications or cellular telecommunication system if, in addition to transmitting a broadcasting service, the system also transmits a telecommunications or cellular telecommunication service;

(d) the reception within Zimbabwe of a broadcasting service includes the reception within Zimbabwe of a broadcasting service transmitted by satellite or any other means.

PART II

BROADCASTING AUTHORITY OF ZIMBABWE

3 Establishment and functions of Broadcasting Authority of Zimbabwe

(1) For the purposes of this Act, there is hereby established an authority, to be known as the Broadcasting Authority of Zimbabwe, which shall be a body corporate capable of suing and being sued in its corporate name and, subject to this Act, of performing all acts that bodies corporate may by law perform.

(2) Subject to this Act, the powers and functions of the Authority shall be—

(a) to plan and advise on the allocation and distribution of the available frequency spectrum, for which purpose it shall have regard to the provisions for the planning of the broadcasting service bands contained in the First Schedule;

(b) to advise the Minister on the adoption and establishment of standards and codes relating to equipment attached to broadcasting systems;

(c) to receive, evaluate and consider applications for the issue of any broadcasting licence or signal carrier licence for the purpose of advising the Minister on whether or not he should grant the licence;

(d) to monitor tariffs charged by broadcasting licensees with a view to eliminating unfair business practices among such licensees and to protect the interests of consumers;

(e) to advise the Minister on ways of improving and promoting a regulatory environment that will facilitate the development of a broadcasting industry in Zimbabwe that is efficient, competitive and responsive to audience needs and the national interest;

(f) to encourage diversity in the control of broadcasting services;

(g) to ensure that Zimbabweans have effective control of broadcasting services or systems;

(h) to ensure the role of broadcasting services and systems in developing and reflecting a sense of Zimbabwean identity, character and cultural diversity;

(i) to promote the provision of high quality and innovative programming by providers of broadcasting services;

(j) to encourage providers of commercial and community broadcasting services and systems to be responsive to the need for a fair and accurate coverage of matters of public interest and for an appropriate coverage of matters of local significance;

(k) to encourage providers of broadcasting services and systems to respect community standards and values in the provision of programme material;

(l) to ensure the provision of means for addressing complaints about broadcasting services;

(m) to ensure that providers of broadcasting services place a high priority on the protection of children from exposure to programme material which may be harmful to them; and

(n) to ensure compliance with this Act and licence conditions and, where empowered, to enforce the provisions of this Act;

(o) to monitor and track the use of the broadcasting service bands;

(p) generally, to advise the Minister on all matters relating to broadcasting systems and services;

(q) subject to this Act, to carry out any function or act as may be prescribed by the Minister.

(3) In the exercise of its functions the Authority shall have regard to the desirability of securing the following objects—

(a) the provision of sufficient broadcasting services throughout Zimbabwe;

(b) the promotion of peace, stability and national cohesion through the provision of broadcasting services;

(c) ensuring that any person by whom any broadcasting service falls to be

provided is able to provide these services at rates consistent with the provision of an efficient and continuous service and the necessity of maintaining independent financial viability;

(d) the development of broadcasting systems and services in accordance with practicable and recognised international standards and public demand;

(e) the satisfaction of present and future reasonable demand for broadcasting services;

(f) the promotion of the interests of consumers, purchasers and other users in respect of the quality and variety of broadcasting services provided;

(g) the maintenance and promotion of effective competition between persons engaged in the provision of broadcasting services and any activities connected therewith;

(h) the advancement of appropriate technology relating to broadcasting systems and services;

(i) the preservation of the national security and integrity of Zimbabwe;

(j) the fostering of Zimbabwean national identity and values.

(4) Subject to this Act, for the better exercise of its functions the Authority shall have the power to do or cause to be done, either by itself or through its agents, all or any of the things specified in the Second Schedule, either absolutely or conditionally and either solely or jointly with others.

(5) Subject to this Act, the Authority shall not, in the lawful exercise of its functions under this Act, be subject to the direction or control of any person or authority.

[Subsection (5) inserted by Act 6/2003 with effect from the 19th September, 2003.]

4 Establishment and composition of Broadcasting Authority of Zimbabwe Board

(1) The operations of the Authority shall, subject to this Act, be controlled and managed by a board to be known as the Broadcasting Authority of Zimbabwe Board.

(2) Subject to subsection (3), the Board shall consist of not fewer than seven members and not more than nine members appointed by the Minister after consultation with the President and in accordance with any directions the President may give him.

(3) Of the members appointed in terms of subsection (2)—

(a) two shall be persons chosen for their experience or professional qualifications in the field of broadcasting technology and broadcasting content respectively; and

(b) one shall be a chief as defined in the Traditional Leaders Act [Chapter 29:17] and nominated by the Council of Chiefs referred to in that Act; and

(c) one shall be a legal practitioner of not less than five years' standing registered in terms of the law in force relating to the registration of legal practitioners; and

(d) one shall be a public accountant of not less than five years' standing registered in terms of the law in force relating to the registration of public accountants; and

(e) one shall be a representative of churches or other religious bodies chosen from a list of nominees submitted by groups representative of churches or other religious bodies.

(4) At least three of the members referred to in subsection (3) shall be women.

(5) The Third Schedule shall apply to the qualifications of members of the Board, their terms and conditions of office, vacation of office, suspension and dismissal, and the procedure to be followed by the Board at its meetings.

(6) If any council or group referred to in subsection (3), or the Board or portfolio committee referred to in subsection (1) of section four A, fails or refuses to submit any nomination within 30 days of being requested to do so by the Minister in writing, the Minister may, subject to subsection (4), appoint any person to represent that council or group or the Board or portfolio committee, and the person so appointed

shall hold office as a member of the Board or of the Independent Disciplinary Committee in all respects as if he or she had been duly nominated and appointed in terms of subsection (3) or subsection (1) of section four A.

[Section 4 substituted by Act 6/2003 with effect from the 19th September, 2003.]

4A Dismissal or suspension of members of Board

(1) For the purposes of subsections (5) and (6) there shall be a committee, hereafter in this section referred to as "the Independent Disciplinary Committee", consisting of—

(a) a person, not being a member of the Board, appointed by the Minister from a list of three registered legal practitioners recommended by the Attorney-General, who shall be the chairperson of the Committee; and

(b) a member of the Board chosen by the Minister from a panel of three members of the Board nominated by the Board; and

(c) a person chosen by the Minister from a list of not less than three names submitted by the portfolio committee of Parliament responsible for broadcasting, who shall not be a member of Parliament.

(2) The Independent Disciplinary Committee shall reach its decisions by consensus or, failing consensus, by a vote of the majority of its members.

(3) A member of the Board shall vacate his or her office if the member—

(a) has, subject to subsection (5), been found to have conducted himself or herself in a manner that renders him or her unsuitable as a member, including a contravention of paragraph 9 of the Third Schedule; or

(b) has failed to comply with any term or, condition of his or her office fixed by the Minister in terms of subparagraph (3) of paragraph 1 of the Third Schedule; or

(c) is mentally or physically incapable of efficiently carrying out his or her functions as a member; or

(d) has been absent without the permission of the Board from two consecutive meetings of the Authority of which he or she was given at least seven days' notice, and there was no just cause for the member's absence.

(4) The Minister may suspend a member of the Board—

(a) whom he or she suspects on reasonable grounds of having been guilty of conduct referred to in paragraph (a) of subsection (3); or

(b) against whom criminal proceedings have been instituted for an offence in respect of which a sentence of imprisonment without the option of a fine may be imposed;

and while that member is so suspended he or she shall not carry out any functions as a member.

(5) A member suspended in terms of paragraph (a) of subsection (4) shall be given notice in writing of the grounds for the suspension and may, within 14 days of being so notified, make written representations to the Independent Disciplinary Committee showing cause why no finding of misconduct rendering him or her unsuitable to be member of the Board should be made.

(6) The Independent Disciplinary Committee shall require a member suspended in terms of subparagraph (a) of subsection (4) to vacate his or her office if—

(a) no representations are made by the member in terms of subsection (5); or

(b) it finds that the member is guilty of the misconduct alleged, upon receiving the written representations of the member referred to in subsection (5) and after affording such member, the Minister and any other person whom it considers to have any interest or knowledge in the matter to make such further representations to it, written or oral, as it deems necessary:

Provided that if it finds that the member is not guilty of the misconduct alleged, the suspension of the member shall immediately be rescinded.

[Section 4A inserted by Act 6/2003 with effect from the 19th September, 2003.]

4B Financial and miscellaneous provisions relating to the Authority

(1) Subject to subsection (2), the Minister may give the Board such general directions relating to the policy the Authority is to observe in the exercise of its functions as the Minister considers to be necessary in the national interest.

(2) Before giving the Board a direction in terms of subsection (1), the Minister shall inform the Board, in writing, of the direction and the Board shall, within 30 days or such further period as the Minister, may allow, submit to the Minister, in writing, its views on the proposal.

(3) The Board shall take all necessary steps to comply with any direction given to it in terms of subsection (1).

(4) When any direction has been given to the Board in terms of subsection (1), the Board shall ensure that the direction and any views the Board has expressed on it in terms of subsection (2) are set out in the Authority's annual report.

[Section 4B inserted by Act 6/2003 with effect from the 19th September, 2003.]

5 Financial and miscellaneous provisions relating to the Authority

The Fourth Schedule shall govern the financial and certain other aspects of the operation of the Authority.

PART III

LICENSING OF BROADCASTING SERVICES AND SYSTEMS

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[Repealed by Act 6/2003 with effect from the 19th September, 2003.]

7 Broadcasting and signal carrier licences

(1) Subject to this Act, and the Zimbabwe Broadcasting Corporation Act [Chapter 12:01], no person shall provide a broadcasting service or operate as a signal carrier in Zimbabwe except in accordance with a broadcasting licence or a signal carrier licence, as the case may be

(2) A broadcasting licence shall authorise the licensee to provide any one of the following classes of broadcasting service—

(a) a commercial broadcasting service;
(b) a community broadcasting service;
(c) a subscription satellite broadcasting service;
(d) a subscription cable broadcasting service;
(e) a subscription narrowcasting service;
(f) an open narrowcasting service;
(g) a datacasting service;
(h) a roadcasting service;
(i) a railcasting service;
(j) a webcasting service.

(3) A signal carrier licence shall authorise a licensee to operate a signal transmitting station for the purpose of transmitting a radio or television broadcasting service.

(4) Any person who contravenes subsection (1) shall be guilty of an offence and liable to—

(a) a fine not exceeding five million dollars or to imprisonment for a period not exceeding two years, where the offence involves the unlicensed provision of any broadcasting service referred to in paragraphs (a) to (f) of subsection (2); or

(b) a fine not exceeding level 10 or to imprisonment for a period not exceeding three months, where the offence involves the unlicensed provision of any broadcasting service referred to in paragraphs (g) to (j) of subsection (2);

or to both such fine and such imprisonment.

[substituted by Act 6/2003 with effect from the 19th September, 2003.]

(5) In addition to any punishment it may impose under subsection (4) and without derogation from its powers under any enactment, a court convicting a person of contravening subsection (1) shall declare forfeited to the State any equipment or apparatus used for the purpose of or in connection with the offence.

(6) The proviso to subsection (1) and subsections (3), (4), (5) and (6) of section 62 of

the Criminal Procedure and Evidence Act [Chapter 9:07] shall apply, mutatis mutandis, in relation to a declaration in terms of subsection (5).

(7) Both the person responsible for recording the programmes used in a railcasting or roadcasting service and the operator of the public service vehicle or railway service who broadcasts such programmes for reception by passengers of such public service vehicle or railway service shall apply for a licence to provide a railcasting or roadcasting service, as the case may be.

[subsection inserted by Act 6/2003 with effect from the 19th September, 2003.]

8 Persons disqualified to be licensed

(1) Subject to subsection (3), a broadcasting licence shall be issued only to individuals who are citizens of Zimbabwe and ordinarily resident in Zimbabwe or to a body corporate in which a controlling interest is held, whether through any individual, company or association or otherwise, by one or more individuals who are citizens of Zimbabwe and ordinarily resident in Zimbabwe.

(2) For the purposes of subsection (1) "controlling interest" means—

(a) all of the securities in the body corporate; or

(b) securities representing all of the share capital of the body corporate; or

(c) securities equivalent in value to one hundred per centum of the share capital of the body corporate; or

(d) securities entitling the holders thereof to all the votes in the affairs of the body corporate.

(3) No licence for a community broadcasting service, commercial broadcasting service or datacasting service shall be issued to a person other than a body corporate.

(4) No licence shall be issued to an applicant who does not comply with Part IV.

(5) No applicant that is a body corporate shall be qualified to be licensed if any one person holds or controls more than ten per centum of the securities in that body corporate.

(6) No person –

(a) whose broadcasting service or signal transmission station is wholly or partly funded by foreign donations or contributions; or

(b) which is a subsidiary company as defined in section 143 of the Companies Act [Chapter 24:03], or whose broadcasting service is provided as agent for, or under a franchise from, another person; or

(c) convicted of an offence in terms of this Act, the Radiocommunications Act [Chapter 12:04] or the Postal and Telecommunications Act [Chapter 12:05]:

shall be licensed.

[substituted by Act 26 of 2001, with effect from the 1st February, 2002.]

(7) No applicant shall be licensed if the applicant or any director of the applicant—

(a) has, in terms of a law in force in any country—

(i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or

(ii) made an assignment to, or arrangement or composition with, his creditors which has not been rescinded or set aside; or

(b) has, within the period of five years immediately preceding the date of his proposed appointment, been convicted—

(i) in Zimbabwe, of an offence; or

(ii) outside Zimbabwe, in respect of conduct which, if committed in Zimbabwe, would constitute an offence;

and sentenced to a term of imprisonment exceeding six months imposed without the option of a fine, whether or not any portion has been suspended, and has not received a free pardon.

9 Restrictions in relation to the issue of certain licences

(1) Only one licence to provide a national free-to-air radio broadcasting service and one licence to provide a national free-to-air television broadcasting service shall be issued in addition to the national broadcasting services provided by any public

broadcaster.
(2) Only one signal carrier licence shall be issued to a person other than a public broadcaster.
(3) With the exception of a public broadcaster, a broadcasting licence and a signal carrier licence shall not be issued to the same person.

10 Application for licence

(1) The Authority shall, if it determines that there is a need for the provision of additional broadcasting services, and after carrying out its functions in terms of the First Schedule, publish a notice in the Gazette and in a national newspaper inviting applications for licences to provide the broadcasting services or systems specified in the notice.
(2) Subject to subsection (1), an application for a licence shall be submitted to the Authority in the form and manner prescribed, and be accompanied by the prescribed fee and such information or documents as may be prescribed or as the Authority may require, including information concerning any tariff required in terms of section forty-four.
(3) Within seven days of submitting his application in the prescribed manner and form, an applicant shall publish his application in a national newspaper at his own expense and in a manner and form approved by the Authority, and the Authority shall not consider the application until it has received proof of such publication.
(4) Within fourteen days of the publication of an application for a licence, any person having any objection to the application may lodge a written objection with the Authority.
(5) The Authority shall examine all applications and objections thereto with a view to short-listing those applicants who, in its opinion, may qualify to be licensed.
(6) Every applicant for a licence to provide any of the broadcasting services specified in paragraph (a), (c), (d), (e) or (f) of subsection (2) of section seven, who is short-listed in terms of subsection (5), shall be required to attend a public inquiry conducted by the Authority for the purpose of determining his or her suitability to be licensed, at a time and place to be determined in a written notice to such applicant.
[substituted by Act 6/2003 with effect from the 19th September, 2003.]
Every applicant shortlisted in terms of subsection (5) shall be required to attend a public inquiry conducted by the Authority for the purpose of determining his suitability to be licensed, at a time and place to be determined in a written notice to such applicant.
(7) The Authority may refuse to consider an application for a licence referred to in subsection (6) if, upon receiving satisfactory proof of service of the notice referred to in subsection (6), the applicant fails to attend the inquiry.
[amended by Act 6/2003 with effect from the 19th September, 2003.]
(8) For the purposes of a public inquiry held in terms of subsection (6), the members of the Authority shall have all of the powers, rights, privileges and duties conferred or imposed upon a commissioner by the Commissions of Inquiry Act [Chapter 10:07], other than the power to order a person to be detained in custody, and sections 9 to 13 and 15 to 18 of that Act shall apply, mutatis mutandis, in relation to any hearing conducted by the Authority and to any person summoned to give or giving evidence for the purpose of the hearing.
(9) After consideration of an application for a licence in terms of this section, whether after a public inquiry or otherwise, the Authority may issue or refuse to issue the licence sought and notify the applicant of its decision and, in the case of a refusal to issue a licence, of the reasons thereof.
[subsection (9) substituted by Act 6/2003, which also repealed subsection (10), with effect from the 19th September, 2003.]
(11) Within thirty days after the issue of a licence in terms of subsection (10) the licensee shall, at his own expense, cause the licence to be published in a national newspaper.

11 Terms and conditions of licence

(1) A licence shall be issued subject to—

(a) this Act; and

(b) the standard conditions specified in the Fifth Schedule; and

(c) such terms and conditions as the Minister may reasonably determine after consultation with the Authority:

Provided that conditions of broadcasting licences must be relevant to the category of broadcasting services to which those licences relate.

(2) Without limiting the range of conditions that may be imposed, the Minister may in addition impose a condition on a broadcasting licensee—

(a) requiring the licensee to comply with a code of conduct that is applicable to the licensee in terms of section twenty-four; or

(b) designed to ensure that a breach of a condition by the licensee does not recur.

(3) Every licence for the provision of a radio, television or subscription cable broadcasting service shall be issued subject to the local content conditions specified in the Sixth Schedule.

(4) Not less than ten per centum of total programming content broadcast by any licensee shall be—

(a) in any of the national aboriginal languages of Zimbabwe other than Shona and Ndebele; and

(b) in the case of a television broadcasting licensee, in a manner that may be understood by audiences who have a hearing impairment.

(5) A licensee shall make one hour cumulatively per week of its broadcasting time available for the purpose of enabling the Government of the day, at its request, to explain its policies to the nation.

(6) A licensee shall observe and comply with the provisions of the Copyright Act [Chapter 26:01] when providing his service;

(7) A licensee shall commence to provide a broadcasting service or operate as a signal carrier, as the case may be, within six months of the date of the issue of the licence concerned.

(8) No licensee shall, unless generally or specially authorised in writing by the Minister, employ a person who is not a citizen of Zimbabwe and ordinarily resident in Zimbabwe to work or assist in the working or maintenance of a licensed broadcasting service or signal transmitting station.

(9) It shall be a condition of every signal carrier licence that the licensee shall comply with the International Telecommunication Constitution.

(10) A licensee shall not broadcast outside the licence area of the licence unless he proves to the satisfaction of the Authority that broadcasting outside that licence area occurred accidentally or is a necessary result of the provision of the licensee's broadcasting services within the licence area.

12 Form and period of validity of licence

(1) A licence shall be in the prescribed form and shall specify—

(a) the name and address of the licensee; and

(b) the date of issue and expiry of the licence; and

(c) any terms and conditions in addition to those imposed by this Act subject to which the licence is issued; and

(d) any other matters which the Minister considers necessary to give effect to this Act; and

(e) in the case of a corporate licensee, the shareholding structure of the licensee and the names and other relevant details of the directors; and

(f) the sources and manner of funding of the licensee.

(2) A licence for a broadcasting service specified in paragraphs (a) to (f) of subsection (2) of section seven shall be valid for a period of ten years.

[substituted by Act 6/2003 with effect from the 19th September, 2003.]

(3) A licence for a broadcasting service specified in paragraphs (g) to (j) of subsection (2) of section seven, shall be valid for a period of two years.
[substituted by Act 6/2003 with effect from the 19th September, 2003.]

13 Register of licences

(1) The Authority shall maintain or cause to be maintained a register of licences in which shall be recorded, in relation to each licence—

(a) the name of the licensee; and

(b) any terms and conditions subject to which the licence was issued; and

(c) any renewal, amendment, suspension or cancellation of the licence.

(2) The register kept in terms of subsection (1) shall be open for inspection by members of the public at all reasonable times at the offices of the Authority on payment of the prescribed fee.

14 Renewal of licence

(1) Subject to this Act, the holder of a licence may renew it before it expires.

(2) An application for the renewal of a licence shall be submitted to the Authority in the form and manner and within the period prescribed, and be accompanied by the prescribed fee.

(3) Subsections (3),(4),(9),(10) and (11) of section ten shall, mutatis mutandis, apply to an application to renew the licence.
[substituted by Act 6/2003 with effect from the 19th September, 2003.]

15 Amendment of licence

(1) Subject to this section, the Authority may at any time amend a licence or any term or condition of a licence—

(a) to correct any error in the licence; or

(b) for any reasons connected with regulating the technical administration, technical operation or general efficiency of telephony, telegraphy, posts, wireless broadcasting or television, or connected with the interests of defence, public safety, public order, the economic interests of the State, public morality or public health; or

(c) if the licensee requests an amendment; or

(d) if the Authority considers the amendment necessary to reflect the true nature of the service, system or business which the licensee is conducting.

(2) Before amending a licence in terms of subsection (1), otherwise than at the request of the licensee, the Authority to notify the licensee in writing of the nature of the amendment it proposes to make and of its reasons for wishing to make the amendment, and shall give the licensee thirty days to make representations in the matter.

(3) Where a licensee requests an amendment of its licence and the Authority—

(a) refuses the request, it shall, within ten days after reaching its decision, notify the licensee in writing of its decision and of its reasons for it;

(b) proposes to amend the licence as requested, it shall afford the Minister an opportunity to make representations to it concerning the proposal, and subsections (9) and (11) of section ten shall apply to such proposal as if it were a proposal to issue a licence.
[substituted by Act 6/2003 with effect from the 19th September, 2003.]

16 Suspension and cancellation of licences

(1) Subject to this section, the Authority , on its own initiative or at the request of the Minister, may suspend or cancel any licence if there is evidence that—
[amended by Act 6/2003 with effect from the 19th September, 2003.]

(a) the licence was issued in error or through fraud or the misrepresentation or non-disclosure of a material fact by the licensee; or

(b) the licensee has contravened any provision of this Act that is applicable to him; or

(c) the licensee misrepresents the service or system he offers to the public; or

(d) the licensee has ceased to provide the service or system specified in the licence; or

(e) the licensee has failed to comply with any term or condition of the licence; or

(f) in the case of a licensee which is a body corporate, the licensee has been provisionally or finally wound up or placed under judicial management; or

(g) in the case of a licensee who is an individual, the estate of the licensee has been provisionally or finally sequestrated; or

(h) the licensee has acted in a manner prejudicial to the defence, public safety, public order, public morality or public health of Zimbabwe; or

(i) the licensee has repeatedly breached one or more provisions of the code of conduct applicable to that licensee in terms of section twenty-four, or any standards determined in terms of section twenty-five.

(2) Before taking any action in terms of subsection (1), the Authority shall notify the licensee in writing of its intention to suspend or cancel the licence concerned and the reasons for doing so, and shall call upon the licensee to show cause to the Authority, within seven days of receiving the notice, why the licence should not be suspended or cancelled, as the case may be.

[amended by Act 6/2003 with effect from the 19th September, 2003.]

(3) After receiving any representations from the licensee in terms of subsection (2) the Authority shall, if it is of the opinion that the evidence referred to in subsection (1) justifies such a course, institute a public inquiry for the purpose of determining whether or not the licence in question should be suspended or cancelled.

[amended by Act 6/2003 with effect from the 19th September, 2003.]

(4) For the purposes of a public inquiry held in terms of subsection (3) the members of the Authority shall have all of the powers, rights, privileges and duties conferred or imposed upon a commissioner by the Commissions of Inquiry Act [Chapter 10:07], other than the power to order a person to be detained in custody, and sections 9 to 13 and 15 to 18 of that Act shall apply, mutatis mutandis, in relation to any hearing conducted by the Authority and to any person summoned to give or giving evidence for the purpose of the hearing.

(5) If, at the conclusion of a public inquiry held in terms of subsection (3), the Authority is satisfied for any reason specified in subsection (1) that the licence concerned should be suspended or cancelled, the Authority shall, by notice in writing to the licensee, suspend or cancel the licence or take such other action as it considers appropriate, and publish a notice in the Gazette of such suspension or cancellation or other action.

[substituted by Act 6/2003 with effect from the 19th September, 2003.]

(6)No licence shall be of any force or effect during any period of its suspension.

17 Licensee to inform Authority of changes

(1) A licensee shall without delay, but in any case no later than fourteen days after he becomes aware of the alteration, inform the Authority of any material alteration in the information or particulars furnished by him when he applied for his licence.

(2) A licensee shall without delay inform the Authority of any transfer to or by any single person of more than ten per centum of the shares in the licensee.

18 Transfer of licences prohibited

No licensee shall assign, cede, pledge, transfer or sell his licence to any other person, or surrender his programming duties to another entity outside his establishment. Any such assignment, cession, pledge, transfer, sale or surrender shall be void.

PART IV

LIMITATION OF CONTROL

19 Limitation of cross-ownership between broadcasters, signal carrier licensees, newspapers, telecommunications licensees and advertising agents

(1) No broadcasting licensee—

(a) shall own, control or hold any securities in another broadcasting

licensee;

(b) shall own or control a newspaper or more than ten per centum of the securities in a body corporate owning or controlling a newspaper.

(2) A broadcasting licensee and a signal carrier licensee shall not be owned or controlled by the same person, nor shall broadcasting licensees and signal carrier licensees hold securities in each other.

(3) Licensees and persons licensed under the Postal and Telecommunications Act [Chapter 12:05] (other than private telecommunications licensees as defined in that Act, or individuals licensed in terms of subsection (1) of section 33 of that Act) shall not own, control or hold securities in each other.

(4) No advertising agent shall own, control or hold securities in any licensee.

20 Political parties and organisations not to control broadcasting services

No political party or organisation shall hold or have control of any broadcasting licence or signal carrier licence.

21 Limitation on control of commercial radio and television broadcasting licences

No person shall control more than one commercial radio or television broadcasting licence.

22 Limitations on directorships

(1) No person shall be a director of more than one licensee.

(2) No person other than a citizen of Zimbabwe ordinarily resident in Zimbabwe shall be a director of a licensee.

(3) No person who is a director of a licensee shall be a director of another licensee, a newspaper enterprise, advertising agent or any person licensed under the Postal and Telecommunications Act [Chapter 12:05] (other than private telecommunications licensees as defined in that Act, or individuals licensed in terms of subsection (1) of section 33 of that Act).

23 Licensees to notify Authority of directors and persons controlling the licensee

Each licensee shall, at the end of every period of six months, submit to the Authority in the prescribed form—

(a) details of the persons who, to the knowledge of the licensee, were in a position to exercise control of the licensee at the end of that year; and

(b) the name and address of each person who was a director of the licensee at the end of that period.

PART V

CODES OF CONDUCT AND PROGRAMME STANDARDS

24 Development of codes of conduct

(1) The Authority shall, in consultation with broadcasting licensees, develop codes of conduct governing—

(a) the rules of conduct to be observed by broadcasting licensees;

(b) the standards and practices to be observed in advertising through a broadcasting service, including the prohibition of certain methods and practices of advertising, the length of advertisements and times at which certain advertisements may not be aired or aired with restrictions.

(2) Without derogating from the generality of subsection (1) codes of conduct shall provide for—

(a) broadcasting of programmes that are in accordance with community values and standards; and

(b) methods of ensuring the expression of children while protecting them from exposure to programme material which may be harmful to them; and

(c) methods of classifying programmes; and

(d) promoting accuracy, balance, fairness and completeness in news and current affairs programmes; and

(e) the safeguarding of national security; and

(f) the ethics and standards of coverage of civil and public disorder; and

(g) preventing the broadcasting of programmes that—

(i) simulate news or events in a way that misleads or alarms the audience; or

(ii) depict the actual process of putting a person into a hypnotic state; or

(iii) are designed to induce a hypnotic state in the audience; or

(iv) use or involve the process known as "subliminal perception" or any other technique that attempts to convey information to the audience by broadcasting messages below or near the threshold of normal awareness;

and

(h) such other matters relating to programme content as may be of concern to the community.

(3) Codes of conduct developed in consultation with—

(a) commercial broadcasting licensees shall specify what broadcasting time shall be allocated to advertising the standards that are to apply to advertisements; and

(b) commercial radio broadcasting licensees shall specify what quota of Zimbabwean and African music shall be played in addition to that prescribed by this Act; and

(c) broadcasting licensees generally shall provide for —

(i) methods of handling complaints from the public about programme content or compliance with codes of conduct; and

(ii) methods of reporting to the Authority on complaints so made;

and

(d) television broadcasting licensees shall provide for the captioning of programmes for the hearing impaired; and

(e) community broadcasting licensees shall provide for—

(i) the kinds of sponsorship announcements that may be broadcast by those licensees; or

(ii) the kinds of sponsorship announcements that particular kind of programme may carry;

and

(f) broadcasting licensees generally shall provide for the granting of a right of reply where it is sought and justified; and

(g) subscription broadcasting licensees shall provide for dealings with customers of the licensees, including methods of billing, fault repair, privacy and credit management.

(4) Any code of conduct governing the matters referred to in subsection (2) or (3) that, immediately before the date of commencement of this Act, was applied by a public broadcaster or other person lawfully providing a roadcasting, webcasting or subscription satellite broadcasting service, shall be lodged by that person with the Authority for review in terms of subsection (7).

(5) In developing codes of conduct relating to matters referred to in paragraphs (a) and (c) of subsection (2), community attitudes to the following matters are to be taken into account—

(a) the portrayal in programmes of physical and psychological violence;

(b) the portrayal in programmes of sexual conduct and nudity;

(c) the use in programmes of offensive language, including hate speech;

(d) the portrayal in programmes of the use of drugs, including alcohol;

(e) the portrayal in programmes of matter that is likely to incite or perpetuate hatred against, or vilifies, any person or group on the basis of ethnicity, nationality, race, gender, natural difference or condition, age, religion or physical or mental disability;

(f) the reasonable protection of an individual's name and reputation;

(g) such other matters relating to programme content as are of concern to the community.

(6) If the Authority is satisfied in relation to any code of conduct that—

(a) the code provides appropriate community safeguards for the matters covered by the code; and

(b) members of the public have been invited to comment on the code;

the Authority shall recommend to the Minister that the code be published in the Gazette, and the code shall, from the date of its publication, be binding on all the broadcasting licensees concerned.

(7) The Authority shall periodically conduct a review of any code of conduct developed, lodged or published in terms of this section to ensure that it is in accordance with prevailing community values and standards.

(8) The Minister shall, on the advice of the Authority, prescribe a schedule of monetary and other penalties to be imposed by the Authority in respect of any breaches of a code of conduct by a licensee.

(9) The Authority may, after affording the defaulting licensee a reasonable opportunity to be heard, impose a prescribed monetary penalty upon a licensee who commits any breach of a code of conduct, and a failure to pay such a penalty may be a ground for the cancellation of the licence concerned.

(10) The amount of any penalty paid in terms of subsection (9) shall form part of the funds of the Authority.

25 Minister may require Authority to determine programme standards in certain cases

(1) If—

(a) the Minister is satisfied that there is convincing evidence that a code of conduct developed or published in terms of section twenty-four is not operating to provide appropriate community safeguards in respect of any matter referred to in subsection (2) or (3) of that section; and

(b) the Minister is satisfied that the Authority should determine a standard in relation to that matter;

the Minister shall write to the Authority, directing it to vary or revoke any standard in relation to that matter.

(2) If the Authority determines or varies or revokes a standard, the Authority must publish in the Gazette a notice stating—

(a) that the standard has been determined, varied or revoked; and

(b) the places where copies of the standard or of the variation or revocation can be purchased.

(3) Subsections (8), (9) and (10) of section twenty-four shall apply, mutatis mutandis, to any breaches of a standard.

PART VI

APPROVAL OF TYPE, INSTALLATION AND SITES OF SIGNAL TRANSMITTING STATIONS AND ALLOCATION OF BROADCASTING SERVICE BANDS

26 Approval of type, installation and sites of signal transmitting stations and allocation of broadcasting service bands

(1) Subject to subsection (2), the Authority shall—

(a) approve the sites at which all signal transmitting stations are to be established and at which all broadcasting apparatus used in connection therewith is to be erected; and

(b) allocate the broadcasting service bands on which all signal transmitting stations shall be operated; and

(c) approve—

(i) the mode of transmission to be used in connection with all signal transmitting stations and the power to be radiated therefrom; and

(ii) the classes, types and standards of signal transmitting stations and broadcasting apparatus to be used in connection with different classes of broadcasting services; and

(iii) the classes, types and standards of broadcasting apparatus capable of being used in connection with diffusion services.

(2) In exercising the powers conferred upon it by paragraph (b) or subparagraph (i) of paragraph (c) of subsection (1), the Authority shall have regard to the International Telecommunication Constitution and any other conventions and treaties to which Zimbabwe is a party.

27 Unauthorised possession, establishment, operation of signal transmitting stations, etc., prohibited

(1) No person shall—

(a) possess a signal transmitting station other than a public broadcaster or a signal carrier licensee;

(b) establish a signal transmitting station or erect broadcasting apparatus at a site which has not been approved by the Authority; or

(c) operate a signal transmitting station on a broadcasting service band which is not a broadcasting service band allocated to the signal transmitting station by the Authority; or

(d) use in connection with a signal transmitting station a mode of transmission or cause power to be radiated therefrom which is not the mode of transmission or the radiated power approved for the signal transmitting station by the Authority; or

(e) establish or erect a signal transmitting station or broadcasting apparatus which is not of a class, type or standard approved by the Authority for use in connection with that class of broadcasting service; or

(f) establish, erect or work in connection with a diffusion service broadcasting apparatus which is not of a class, type or standard approved by the Authority; or

(g) modify or extend a signal transmitting station or broadcasting apparatus, whether or not used in connection with a diffusion service, otherwise than in a manner approved by the Authority.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding one million dollars or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(3) In addition to any punishment it may impose under subsection (2) and without derogation from its powers under any enactment, a court convicting a person of contravening subsection (1) shall declare forfeited to the State any equipment or apparatus used for the purpose of or in connection with the offence.

(4) The proviso to subsection (1) and subsections (3), (4), (5) and (6) of section 62 of the Criminal Procedure and Evidence Act [Chapter 9:07] shall apply, mutatis mutandis, in relation to a declaration made in terms of subsection (3).

(5) If the Minister has reason to believe that a broadcasting service is being provided from within or outside Zimbabwe in contravention of this Act, he may direct any person having the technological means to do so at any time to use such means to stop, scramble, obliterate or interfere with the transmission or reception of the broadcaster concerned.

PART VII

BROADCASTING FUND

28 Interpretation in Part VII

In this Part—

"community centre" means any school, railway station, police station and other location providing a service to the community;

"disabled person" means a person who is substantially and permanently handicapped by any physical or mental disability;

"Fund" means the Broadcasting Fund established by section twenty-nine;

"under-serviced area" means any area that is not, in the opinion of the Authority, adequately provided with broadcasting services.

29 Establishment and vesting of Broadcasting Fund

(1) There is hereby established a fund to be known as the Broadcasting Fund.

(2) Subject to this Part, the Fund shall be vested in and administered by the Authority as trustee.

30 Objects of Fund

The objects of the Fund shall be—

(a) the standardisation of broadcasting services and the maintenance of high standards of quality in the provision of such services; and

(b) to make grants to local authorities or their appointed agents for the purpose of assisting needy persons to obtain access to broadcasting services; and

(c) to finance or assist in financing the extension of broadcasting services to under-serviced areas and community centres within or outside such areas; and

(d) to assist in the training of persons in the provision of broadcasting services; and

(e) to promote or contribute towards research and development in the field of broadcasting services; and

(f) to promote and contribute towards the expenses of the adaptation or facilitation of the use of broadcasting services for the benefit of disabled persons; and

(g) to encourage and facilitate, for the benefit of Zimbabwe, the transfer of broadcasting technology from foreign providers of such technology; and

(h) to provide grants to encourage the growth of the Zimbabwean creative arts industry for the purpose of enabling the film and music industry to supply material to meet the local content obligations of broadcasting licensees; and

(i) to provide financial assistance to deserving persons for their training in broadcasting or the creative arts;

in accordance with an annual implementation plan prepared by the Authority in consultation with licensees.

31 Moneys of Fund

The Fund shall consist of—

(a) such monies as may be raised by contributions imposed in terms of section thirty-two; and

(b) such moneys as may be payable to the Fund from moneys appropriated by Act of Parliament for the purpose of the Fund; and

(c) any surplus of income over expenditure at the end of the Authority's financial year appropriated in terms of paragraph 3 of the Fourth Schedule; and

(d) any other moneys to which the Fund may be lawfully entitled.

32 Levies

(1) Every licensee shall pay the prescribed annual levy to the Fund.

(2) The dates on which the levies to the Fund become payable and the manner in which they shall be paid shall be as prescribed.

(3) Any person who fails to pay a levy due to the Fund shall in addition to any other penalty imposed for non-compliance with this Act, be liable to :—

(a) the suspension of his licence ; or

(b) pay to the Fund an amount equivalent to double the levy due.

33 Holding of Fund

(1) All moneys received on behalf of the Fund shall be paid into a banking account and no money shall be withdrawn there from except by means of cheques signed by such persons as are authorised on its behalf by the Authority.

(2) Any part of the Fund not immediately required for the purposes of the Fund may be invested in such manner as the Minister may determine:

Provided that such moneys shall not be invested directly in any securities issued by a licensee that is a corporate body.

34 Financial year of Fund

The financial year of the Fund shall be the period of twelve months ending on the 31st December in each year.

35 Accounts and audit of Fund

(1) The Authority shall cause proper books of accounts of the Fund to be kept, together with adequate financial and other records in relation thereto, and, within three months after the end of the financial year to which the accounts relate, shall submit the accounts for auditing by the person appointed in terms of subsection (2) and to the Comptroller and Auditor-General.

(2) The accounts of the Fund shall be audited by a person approved by the Minister who is registered as a public auditor under the Public Accountants and Auditors Act [Chapter 27:12].

PART VIII

APPLICATION OF ACT TO PUBLIC BROADCASTERS

36 Application of Act to public broadcasters

Subject to this Act and the Zimbabwe Broadcasting Corporation Act [Chapter 12:01], this Act shall apply to the Zimbabwe Broadcasting Corporation referred to in section 3 of that Act (hereinafter in this Part referred to as "the Broadcasting Corporation") and any other public broadcaster.

37 Licensing of public broadcasters

(1) Notwithstanding any other provision of this Act, the Broadcasting Corporation shall be deemed to be licensed to provide every class of broadcasting service that it provided immediately before the date of commencement of this Act.

(2) The Minister shall without delay cause the relevant licenses to be issued to the Broadcasting Corporation and any other public broadcaster, and those licenses may be renewed or amended in all respects as if they had been issued in terms of Part III.

38 Allocation of frequencies to Broadcasting Corporation

All frequencies allocated immediately before the date of commencement of this Act to the Broadcasting Corporation under any enactment shall continue to be operated exclusively by the Broadcasting Corporation.

PART VIIIA

LISTENERS' LICENCES

38A Interpretation in Part VIIIA

In this Part and section forty-six—

"broadcasting company" and "Corporation"

[definitions repealed by Act 6/2003 with effect from the 19th September, 2003.]

"dealer" includes¾

(a) a person who carries on a trade, business or industry in which receivers are assembled, manufactured, imported, bought, sold, hired or exchanged or offered or exposed for sale, hire or exchange; or

(b) a person who deals in motor-vehicles in which receivers are installed; or

(c) an auctioneer of receivers; or

(d) the employee or agent of a person referred to in paragraph (a), (b) or (c);

"digital conversion signal carrier company" means the company formed in terms of section 3 of the Zimbabwe Broadcasting Corporation (Commercialisation) Act, 2001, as the successor to the signal carriage functions of the Corporation.

"former Corporation" means the Zimbabwe Broadcasting Corporation referred to in section 3 of the Zimbabwe Broadcasting Act [Chapter 12:01];

[inserted by Act 6/2003 with effect from the 19th September, 2003.]

"inspector" means an inspector appointed in terms of subsection (a1) of section 38D;

[inserted by Act 6/2003 with effect from the 19th September, 2003.]

"listener" means a person who has in his possession a receiver otherwise than in his capacity as—

(a) an operator of a diffusion service; or

(b) the legal representative of a person who is of unsound mind or who has died or who—

(i) has been adjudged or otherwise declared insolvent or bankrupt; or

(ii) has made an assignment to or arrangement or composition with his creditors; or

(iii) is being wound up or is under judicial management;

in terms of a law in force in any country:

Provided that a dealer who has a receiver—

(a) in or on his business premises; or

(b) being used in the course of a demonstration;

shall not be regarded as a listener in respect of his possession of that receiver;

[inserted by Act 6/2003 with effect from the 19th September, 2003.]

"receiver" means an apparatus—

(a) in respect of which no licence is required in terms of the Postal and Telecommunications Act [Chapter 12:05]; and

(b) which is capable of being used for the reception of a broadcasting service;

[inserted by Act 6/2003 with effect from the 19th September, 2003.]

"Zimbabwe Broadcasting Corporation" means the national broadcasting service formed as the successor to the former Corporation in terms of section 3 of the Zimbabwe Broadcasting Corporation (Commercialisation) Act, 2001 [Chapter 12:01].

[inserted by Act 6/2003 with effect from the 19th September, 2003.]

38B Licensing of listeners

(1) No listener shall have in his possession in Zimbabwe a receiver otherwise than in accordance with the terms and conditions of a licence issued by the Zimbabwe Broadcasting Corporation or by agents of the Zimbabwe Broadcasting Corporation appointed by it in terms of subsection (a1) of section thirty-eight D.

[substituted by Act 6/2003 with effect from the 19th September, 2003.]

(2) The fees payable on the issue of licences referred to in subsection (1) shall be fixed by the Zimbabwe Broadcasting Corporation with the approval of the Minister by statutory instrument and the Zimbabwe Broadcasting Corporation may fix different fees for different prescribed classes of listeners:

Provided that the Minister may, after consultation with the Zimbabwe Broadcasting Corporation, exempt any class of listeners from payment of all or any of the fees referred to in this subsection.

[amended by Act 6/2003 with effect from the 19th September, 2003.]

(3) Subsection (3) shall not apply to a listener¾

(a) who is a bona fide tourist residing outside Zimbabwe and who has brought a receiver temporarily into Zimbabwe for a period not exceeding three months; or

(b) whose receiver is capable of use solely in connection with a diffusion service.

38C Collection of licence fees

Licence fees referred to in subsection (2) of section thirty-eight B, less such amounts as may be payable for the services of the agents of the Zimbabwe Broadcasting Corporation referred to in subsection (1) of section thirty-eight B, shall be paid into the general funds of Zimbabwe Broadcasting Corporation for the use of the Corporation.

[amended by Act 6/2003 with effect from the 19th September, 2003.]

38D Appointment of inspectors and powers of inspectors and police officers

[substituted by Act 6/2003 with effect from the 19th September, 2003.]

(a1) The Zimbabwe Broadcasting Corporation may appoint persons employed by it to be inspectors for the purposes of this Part and shall furnish each person so appointed with a certificate signed on behalf of the Corporation stating that he has been appointed as an inspector.

[inserted by Act 6/2003 with effect from the 19th September, 2003.]

(1) An inspector or police officer may require a person who he has reasonable cause

to suspect is a listener to produce his licence for inspection.

(2) If a person referred to in subsection (1)¾

(a) is unable to produce his licence on demand; or

(b) cannot be located at his usual or last known place of abode or business;

the inspector or police officer concerned may serve on that person a notice in the prescribed form requiring that person to produce that notice and his licence to the police officer in charge of a police station within a period of seven days from the date of service of that notice.

(3) It shall be the duty of a police officer to whom a notice and licence have been produced in terms of subsection (2) forthwith¾

(a) to issue to the person who produced the notice and licence a receipt in the prescribed form; and

(b) to notify the inspector or police officer who served the notice that the notice and licence have been so produced.

(4) If a person referred to in subsection (1) who is unable to produce his licence on demand or cannot be located at his usual or last known place of abode or business is served with a notice referred to in subsection (2) and¾

(a) fails to comply with the requirement contained in that notice, he shall be presumed, until the contrary is proved, not to have been issued with a licence;

(b) is subsequently prosecuted for failing to comply with the requirement contained in that notice, he shall be presumed, until the contrary is proved, not to have produced that notice and his licence in compliance with the requirement contained in that notice if the inspector of police officer who served that notice has not been notified in terms of paragraph (b) of subsection (3).

(5) An inspector or police officer may at all reasonable times enter premises¾

(a) in or on which a dealer carries on business; or

(b) other than a dwelling-house, which are owned or occupied by a person whom he has reasonable cause to suspect is in possession of a receiver; or

(c) in or on which he has reasonable cause to suspect an offence against this Act has been committed;

and shall have power to make such examination, inspection and inquiry and do such things as may appear to him necessary for ascertaining whether or not compliance has been made with this Act.

(6) An inspector or police officer may require a dealer to produce to the inspector or police officer such books, accounts or other documents relating to the business carried on by the dealer and required to be kept by the dealer as the inspector or police officer may specify.

(7) An inspector shall, on demand by any person affected by the exercise of the powers conferred upon the inspector by this section, exhibit the certificates issued to him in terms of subsection (a1);

[amended by Act 6/2003 with effect from the 19th September, 2003.]

38E Offences and penalties under part VIIIA

(1) A person who—

(a) fails or refuses to register as a dealer with the Zimbabwe Broadcasting Corporation when required to do so in terms of regulations made under section forty-six; or

(b) fails or refuses to furnish a return or to supply information to the Zimbabwe Broadcasting Corporation in the manner and in the time prescribed under section forty-six or furnishes a false or incomplete return or supplies false or incomplete information to the Corporation; or

(c) fails to comply with the requirement contained in a notice served on him in terms of subsection (2) of section thirty-eight D or with a requirement made by an inspector or police officer in terms of subsection (6) of that section; or

(d) wilfully delays or obstructs an inspector or police officer in the

exercise of the powers conferred upon him by or under this Part; or

(e) fails or refuses, without reasonable cause, to give information to an inspector or police officer, when required to do so in terms of section thirty-eight D, or gives false or incomplete information; or

(f) fails to comply with the terms and conditions of a licence issued to him in terms of this Part; or

(g) for the purpose of obtaining, whether for himself or another `person, the issue of a licence in terms of this Part, makes a declaration or statement which he knows to be false in any particular or does not know or believe to be true, or knowingly makes use of such a declaration or statement or a document containing the same; or

(h) contravenes—

(i) subsection (1) of section thirty-eight B;

(ii) regulations, orders or notices made or issued in terms of section 46 for the purposes of this Part;

shall be guilty of an offence and liable—

A. for a contravention of subsection (1) of section thirty-eight B to a fine not exceeding level 3;

B. in the case of any offence not referred to in subparagraph A, to a fine not exceeding level 5 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(2) A court convicting a person of an offence of—

(a) having in his possession a receiver the possession of which is not authorised by a licence referred to in subsection (1) of section thirty-eight B; or

(b) making a declaration or statement referred to in paragraph (g) of subsection (1) or making use of such a declaration or statement or a document containing the same, thereby obtaining in respect of a receiver in his possession a licence referred to in subsection (1) of section thirty-eight B on payment of a fee which is less than the appropriate licence fee;

may, on the application of the prosecutor and in addition to any penalty which it may impose, do either or both of the following—

(i) order that the receiver concerned be forfeited to the State;

(ii) give summary judgement in favour of the Zimbabwe Broadcasting Corporation for the amount of the appropriate licence fee or, as the case may be, an amount equal to the difference between the fee actually paid by the person and the appropriate licence fee.

(3) On the hearing of an application referred to in subsection (2) a court shall, for the purpose of determining the amount of the appropriate licence fee and, in the case of a prosecution for an offence referred to in paragraph (b) of that subsection, the liability of the accused to pay the same, refer to the proceedings and evidence at the trial and consider such further evidence, whether oral or documentary, as may be tendered by the prosecutor and the accused.

(4) A judgement given by a court in terms of subparagraph (ii) of subsection (2) shall have the same force and effect and may be executed in the same manner as if the judgement had been given in a civil action instituted—

(a) in the case of the court of a regional magistrate, in the court of a `magistrate other than a regional magistrate; or

(b) in the case of a court other than the court of a regional magistrate, in the first-mentioned court.

(5) If the Minister has, in terms of subsection (3) of section forty-six, classified listeners, a certificate purporting to be signed by the managing director or general manager of the Zimbabwe Broadcasting Corporation and alleging that a person is a member of a particular class of listener shall, on its mere production, be admissible—

(a) on the prosecution of the person for a contravention of this Part; or

(b) for the purpose of determining the amount of the appropriate licence

fee to which an application made in terms of subsection (3) for summary judgement relates;
as prima facie evidence of the facts stated in the certificate.
(6) A certificate under the hand of an inspector shall, in any proceedings under this Part or in any criminal proceedings in respect of a contravention of this Part or regulations made under section forty-six for the purposes of this Part, be prima facie evidence of the facts stated therein and it shall not be necessary to tender oral evidence of those facts unless the court before which the proceedings are held so directs, in which event a postponement shall be allowed to enable the inspector whose oral evidence is required to attend.
[Section 38E inserted by Act 6/2003 with effect from the 19th September, 2003.]

PART IX

GENERAL

39 Public service obligations of licensees

(1) In this section—
"emergency" means any event or circumstance resulting from a major accident, natural disaster, epidemic, civil unrest or public disorder or war which is declared to be such by the Minister by notice published in the Gazette;
"emergency organisation" means, in respect of any locality, the police, defence forces, civil defence and any fire, ambulance or other emergency service;
"national event" means any event or occasion which is declared to be such by the Minister by notice published in the Gazette.
(2) A licensee shall provide such information and facilities as will enable a person to communicate with an emergency organisation free of charge in the event of an emergency occurring within any area serviced by the emergency organisation.
(3) A licensee shall, as a public service, provide sufficient coverage of national events.
(4) Every licensee shall, when providing an information service, provide a fair, balanced, accurate and complete service.
(5) Every subscription satellite broadcasting licensee shall transmit an unencoded signal from a public broadcaster.

40 Complaint procedure of licensees

(1) Every licensee shall establish a procedure for dealing with complaints by consumers of its services which ensures that—
(a) every such complaint is attended to within a reasonable time and in any case within fourteen days by a person having the authority to effect any remedial action that may be necessary; and
(b) the complainant is made aware of his right to complain to the Authority if the complaint is not remedied.
(2) Every licensee shall keep a record of all complaints made by consumers and make the record available for inspection at the request of the Authority.
(3) If no complaint referred to in subsection (1) is attended to or remedied within the time there specified, the consumer concerned may lodge the complaint in a prescribed form with the Authority.
(4) The Minister shall, on the advice of the Authority, prescribe the form and manner in which complaints shall be dealt with.
(5) The Authority shall not deal with a complaint that is the subject of litigation pending before a court.

41 Broadcasting licensees to keep records of programmes

In addition to the requirements of paragraph 5 of the Fifth Schedule, every broadcasting licensee shall, in the prescribed manner—
(a) make and keep a record of every programme broadcast by it, which record shall at all times be made available for inspection by the Authority at its request;
(b) provide a copy of each of its programmes free of charge to the

National Archives of Zimbabwe referred to in section 3 of the National Archives of Zimbabwe Act [Chapter 25:06].

42 Inspections

(1) The Authority may appoint persons employed by it to be inspectors for the purposes of this Act and shall furnish each person so appointed with a certificate signed on behalf of the Authority stating that he has been appointed as an inspector.

(2) An inspector or a police officer may require a person whom he has reasonable cause to suspect is a person required in terms of this Act to possess a licence to produce his licence.

(3) If a person referred to in subsection (2)—

(a) is unable to produce his licence on demand; or

(b) cannot be located at his usual or last-known place of abode or business;

the inspector or police officer concerned may serve on the person a notice in the prescribed form requiring that person to produce that notice and his licence to the police officer in charge of a police station within a period of seven days from the date of service of that notice.

(4) A police officer to whom a notice and a licence have been produced in terms of subsection (3) shall forthwith—

(a) issue to the person who produced the notice and licence a receipt in the prescribed form; and

(b) notify the inspector or police officer who served the notice that the notice and the licence has been produced.

(5) If a person who has been served with a notice in terms of subsection (2)—

(a) fails to comply with the requirement contained in that notice, he shall be presumed, until the contrary is proved, not to be the holder of the licence referred to in the notice;

(b) is subsequently prosecuted for failing to comply with the requirement contained in that notice, he shall be presumed, unless the contrary is proved, not to have produced that notice and his licence in compliance with the notice.

(6) Subject to subsection (8), an inspector or a police officer may, at all reasonable times enter premises—

(a) of a licensee; or

(b) which are owned or occupied by a person whom he has reasonable cause to suspect—

(i) is operating as a signal carrier or operating a signal transmitting station in contravention of this Act; or

(ii) is providing any service for which a broadcasting licence is required;

and shall have power to make such examination, inspection and inquiry and do such things as may appear to him necessary for ascertaining whether compliance has been made with this Act.

(7) Subject to subsection (8), an inspector may inspect at all reasonable times a radio transmitting station, broadcasting apparatus or premises worked or used by or in the possession or under the control of a licensee.

(8) The powers of entry and inspection conferred by this section shall not be exercised except with the consent of the person in charge of the premises concerned, unless there are reasonable grounds for believing that it is necessary to exercise them for the prevention, investigation or detection of an offence in terms of this Act or for the obtaining of evidence relating to such an offence.

(9) An inspector or police officer may, in the exercise of the powers conferred upon him by this section, seize—

(a) a radio transmitting station which he has reasonable cause to suspect is being operated by or is in the possession or under the control of a person in contravention of this Act; or

(b) any broadcasting material, book, record or document which he has

reasonable cause to suspect, will afford evidence of the commission of an offence against this Act;

and may retain it for so long as may be necessary for the purpose of any examination, investigation, trial or inquiry.

(10) An inspector may, in the exercise of the powers conferred upon him by this section, order a person referred to in subsection (7) to cease using, pending inquiry by the Authority, a radio transmitting station or broadcasting apparatus which, in his opinion, is being operated otherwise than in accordance with this Act or the International Telecommunication Constitution or, as the case may be, the terms and conditions of his licence.

(11) An inspector shall, on demand by any person affected by the exercise of the powers conferred upon him by this section, exhibit the certificate issued to him in terms of subsection (1).

(12) Any person who—

(a) fails to comply with the requirement contained in a notice served on him in terms of subsection (3), or with a requirement made by an inspector in terms of subsection (10); or

(b) wilfully delays or obstructs a police officer or inspector in the exercise of the powers conferred upon him by this Act;

shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[amended by Act 22 of 2001, with effect from the 10th September, 2002, and by Act 6 of 2003 with effect from the 19th September, 2003.]

43 Appeals

(1) Subject to this section, any person who is aggrieved by—

(a) a decision of the Authority not to issue a licence; or

(b) any term or condition of a licence issued to him, or a refusal by the Authority to specify a term or condition in a licence; or

(c) a refusal by the Authority to renew a licence; or

(d) any amendment of a licence or a refusal by the Authority to amend a licence; or

(e) the suspension or cancellation of a licence;

may, within twenty-eight days after being notified of the decision or action of the Authority, appeal to the Administrative Court.

(2) An appeal in terms of subsection (1) shall be made in the form and manner and within the period prescribed in the rules of court.

(3) For the purpose of determining an appeal in terms of subsection (1) the President of the Administrative Court shall be assisted by two assessors.

(4) On an appeal in terms of subsection (1), the Administrative Court may, subject to subsection (5), confirm, vary or set aside the decision or action appealed against and may make such order, whether as to costs or otherwise, as the court thinks just.

(5) Any person whose appeal on a ground specified in paragraph (a) or (c) of subsection (1) is upheld shall not be entitled to receive a licence but shall be entitled to have his matter remitted to the Authority for re-determination in terms of this Act.

[amended by Act 6/2003 with effect from the 19th September, 2003.]

44 Approval of tariffs by Authority

(1) At the time of applying for the issue or renewal of his licence, a licensee shall submit for the approval of the Authority written particulars of his proposed tariff, if any, at the commencement of the licensing period.

(2) If a licensee proposes to amend or replace the tariff that was approved at the time when his licence was issued or renewed, he shall give notice to the Authority within such period and in such form and manner as the Authority may require or as may be prescribed.

(3) The Authority shall, within fourteen days of the receipt of the proposal, respond

in writing confirming whether or not a proposal submitted in terms of subsection (2) is approved, and where the Authority has not so responded within such period, the proposal shall be deemed to have been approved by the Authority.

(4) No amended or substituted tariff shall come into operation before the expiry of seven days following its approval by the Authority or the expiry of twenty-one days following the submission of a proposal in terms of subsection (2) to which no response has been received.

(5) A licensee to whom this section applies shall publish his tariff by—

(a) making it available for inspection at his principal places of business during normal business hours; and

(b) promptly sending the relevant parts of it at the request of any consumer of his services.

45 Exemption from liability for Authority

No liability shall attach to the Authority or to any employee of the Authority or the Board or to a member of the Board or any committee of the Board for any loss or damage sustained by any person as a result of the bona fide exercise or performance of any function which by or in terms of this Act is conferred or imposed upon the Authority or the Board.

46 Regulatory powers of the Minister

(1) The Minister may, by regulation, order or notice, prescribe matters that, by this Act, are required or permitted to be prescribed or that in the opinion of the Minister are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without derogating from the generality of subsection (1), regulations, orders or notices made in terms of subsection (1) may provide for—

(a) the form, manner and period in which applications for licenses shall be made;

(b) the form, manner and period in which complaints against licensees shall be dealt with;

(c) the amount of the annual levy payable in terms of section thirty-two;

(d) the manner in which monies held in the Broadcasting Fund established by section twenty-nine may be invested;

(e) any further conditions to which any class of licence shall be subject;

(f) further categories of broadcasting licences;

(g) the fees to be paid for licences and the manner of their payment;

(h) the prohibition, restriction or control of the importation, purchase and sale of any apparatus capable of causing harmful interference;

(h1) the registration with the broadcasting company of dealers as defined in that section and the information to be supplied to the broadcasting company in connection with applications for registrations;

[Paragraph (h1) inserted by s.10(e) of Act 29/2001 and further substituted by Act 6/2003 with effect from the 19th September, 2003.]

(h2) the keeping of books, records and documents, the furnishing of returns and the supply of information to the Zimbabwe Broadcasting Corporation relating to dealings in receivers;

[Paragraph (h2) inserted by s. 10(e) of Act 29/2001 and further substituted by Act 6/2003 with effect from the 19th September, 2003.]

(h3) the collection and transmission to the Zimbabwe Broadcasting Corporation of the licence fees referred to in subsection (2) of section thirty-eight B;

[Paragraph (h3) inserted by s.10(e) of Act 29/2001 and further substituted by Act 6/2003 with effect from the 19th September, 2003.]

(h4) prohibiting the delivery of a receiver by a dealer referred to in paragraph (h1) in pursuance of the sale, exchange, hire or repair of the receiver to a person who is not authorised by a licence referred to in subsection (2) of section thirty-eight B to possess the receiver;

[Paragraph (h4) inserted by s.10(e) of Act 29/2001.]

(h5) the notification to the Zimbabwe Broadcasting Corporation by listeners of changes in their place of abode or business;

[Paragraph (h5) inserted by s.10(e) of Act 29/2001 and further substituted by Act 6/2003 with effect from the 19th September, 2003.]

(h6) the form and manner in which applications for licences in terms of section thirty-eight B are to be made and the information to be supplied in connection therewith;

[Paragraph (h6) inserted by s.10(e) of Act 29/2001 and further substituted by Act 6/2003 with effect from the 19th September, 2003.]

(h7) the circumstances in which and the terms and conditions subject to which licences in terms of section thirty-eight B shall be issued;

[Paragraphs (h7)to(H11) inserted by Act 6/2003with effect from the 19th September, 2003.]

(h8) the form of licences in terms of section thirty-eight B, the terms and conditions to be contained in the licences and the periods for which the licences shall remain in force;

(h9) the issue of licences in terms of section thirty-eight B without charge authorising the possession of receivers by such persons or classes of persons or in such institutions or classes of institutions as the Zimbabwe Broadcasting Corporation, after consultation with the Authority and the Minister, may specify;

(h10) the circumstances in which, and the conditions, including the payment of a fee, subject to which, copies of licences may be obtained;

(h11) any other matter in connection with the Zimbabwe Broadcasting Corporation or the digital convergence signal carrier company that, in the opinion of the Minister, is required to be provided for in the public interest;

(i) such matters as the Minister may consider appropriate or necessary to give force and effect within Zimbabwe to the provisions of the International Telecommunication Constitution.

(3) In making regulations, orders or notices the Minister may classify dealers and listeners and otherwise make different provision for different classes of persons.

[Subsection (3) inserted by Act 6/2003 with effect from the 19th September , 2003.]

47 Savings and transitional provisions

(1) Any regulations, by-laws or notices which, immediately before the date of commencement of this Act, were in force under the Broadcasting Act [Chapter 12:01] shall continue in force as if made in terms of this Act.

(2) Any application or purported application made before the date of commencement of this Act for the operation of any broadcasting system or service, whether in terms of the Broadcasting Act [Chapter 12:01], the Radiocommunication Services Act [Chapter 12:04] or the Postal and Telecommunications Act [Chapter 12:05], shall not be treated as an application for the purposes of section ten.

(3) Any person who, immediately before the date of commencement of this Act was lawfully providing a datacasting service, a roadcasting service, a webcasting service or a subscription satellite broadcasting service shall be deemed to be licensed for the purpose of providing the same service or system until the 28th February,2002, and any application made after that date in terms of this Act for a licence to provide that service shall be treated as an application for a new licence in terms of section ten and not for the renewal of a licence.

[amended by Section 10 of Act 26 of 2001, with effect from the 1st February, 2002.]

(4) This Act shall be deemed to have come into operation on the date of commencement of the Presidential Powers (Temporary Measures) (Broadcasting) Regulations, 2000, published in Statutory Instrument 255A of 2000 (hereinafter called “the Regulations”), and anything done in terms of those regulations shall be valid as if it had been done in terms of this Act.

48 Amendment of Cap. 12:01 and Cap 12:05

(1) The Broadcasting Act [Chapter 12:01] is amended—

(a) in the long title, by the deletion of "to confer upon the Corporation the sole right to broadcast in Zimbabwe; to provide for the licensing of operators of diffusion services and of listeners;" and the substitution of "to provide for the licensing of listeners;".

(b) by the repeal of section 1 and the substitution of—

"1 Short title

This Act may be cited as the Zimbabwe Broadcasting Corporation Act [Chapter 12:01]

(c) in section 27 by the insertion after "Corporation" of ", a person licensed in terms of the Broadcasting Services Act [Chapter 12:06]".

(2) The Postal and Telecommunications Act [Chapter 12:05] is amended in section 33 by the insertion in subsection (2) after "no person" of "other than the Zimbabwe Broadcasting Corporation or a person licensed in terms of the Broadcasting Services Act [Chapter 12:06]".

First Schedule (Sections 3 (2)(a) and 10 (1))

PLANNING OF BROADCASTING SERVICE BANDS

Interpretation

1. In this Schedule—

"broadcasting service bands licence" means a commercial or community television broadcasting licence or a commercial radio broadcasting licence that licenses the use of the broadcasting service bands as a means of delivering broadcasting services;

"frequency allotment plan" means a plan prepared in terms of paragraph 4;

"International Telecommunication Union" means the International Telecommunication Union constituted by the International Telecommunication Constitution;

"licence area" means a defined geographical area in respect of which a person may be licensed to provide any specified class of broadcasting service;

"licence area plan" means a plan prepared in terms of paragraph 5.

Planning criteria

2. In performing its functions under this Act, the Authority, as the sole manager of all broadcasting service bands, shall promote the objects of this Act, having particular regard to the economic and efficient use of the radio frequency spectrum, and to the following—

(a) demographics; and

(b) social and economic characteristics within the licence area, within neighbouring licence areas and within Zimbabwe generally; and

(c) the number of existing broadcasting services and the demand for new broadcasting services within the licence area, within neighbouring licence areas and within Zimbabwe generally; and

(d) developments in technology; and

(e) technical restraints relating to the delivery or reception of broadcasting services; and

(f) the use of the radio frequency spectrum for services other than broadcasting services; and

(g) International Telecommunication Union standards and practices; and

(h) future demand for broadcasting service bands; and

(i) such other matters as the Authority considers relevant.

Authority to determine priorities

3. (1) Before preparing frequency allotment plans or licence area plans, the Authority shall, by notice published in the Gazette, determine priorities, as between particular areas of Zimbabwe and as between different parts of the broadcasting services bands, for the preparation of those plans. In making its determination under this paragraph, the Authority shall take into account the populations of the particular areas.

(2) The Authority may, by notice in the Gazette, vary priorities.

Preparation of frequency allotment plans

4. (1) The Postal and Telecommunications Authority shall allocate all frequencies for the purposes of broadcasting services to the Authority, and the Authority shall manage and allocate the frequencies for all broadcasting systems or services in Zimbabwe.

(2) After the Postal and Telecommunications Authority has referred a part of the radio frequency spectrum to the Authority for planning and licensing in terms of subparagraph (2), the Authority shall prepare in writing a frequency allotment plan that determines the number of channels that are to be available in particular areas of Zimbabwe for the purpose of broadcasting systems or services using that part of the radio frequency spectrum, and shall specify any frequencies that are reserved for future use.

(3) The Authority may, by notice published in the Gazette, vary a frequency allotment plan.

(4) In preparing or varying a frequency allotment plan, the Authority shall comply with any directions, whether of a general or specific nature, given to the Authority by the Minister and published by him in the Gazette.

Preparation of licence area plans

5. (1) Prior to the issuing of any broadcasting licence, the Authority shall prepare by notice published in the Gazette licence area plans that determine the number and characteristics, including technical specifications, of broadcasting services or systems that are to be available in particular areas of Zimbabwe using the broadcasting service bands, and those plans must be consistent with the relevant frequency allotment plan, and must conform to International Telecommunication Union standards and practices.

(2) The Authority may, by notice published in the Gazette, vary a licence area plan.

Designation of licence areas

6. (1) Before allocating a new broadcasting service bands licence, the Authority shall designate one of the areas referred to in paragraph 5 as the licence area of the licence.

(2) If the Authority varies a licence area plan, the Authority may vary the designation of the relevant licence areas.

Process to be public

7. (1) In performing its functions under this Schedule, the Authority shall make provision for wide public consultation, by inviting interested persons through a notice in one or more national newspapers to make written submissions in a prescribed manner.

(2) The Authority shall keep a record of, and make available for public inspection, all advice received by the Authority, when performing its functions under this Schedule.

Authority may determine population figures

8. (1) The Authority may, by notice published in the Gazette, determine the population of a licence area.

(2) The Authority may, by notice published in the Gazette, determine a number that is to be the population of Zimbabwe for the purposes of this Act.

(3) In making a determination, the Authority shall have regard to the most recently published census count prepared by the Director of Census and Statistics referred to in section 3 of the Census and Statistics Act [Chapter 10:05].

(4) The Authority shall make a new determination of the population of a licence area if the licence area is changed.

(5) The Authority shall specify, in a determination of the population of a licence area—

(a) the percentage of the population of Zimbabwe constituted by that licence area population; and

(b) the percentage of that licence area population that is attributable to another licence area which overlaps with the licence area concerned.

Minister may reserve capacity for national broadcasters or community broadcasters

9. (1) The Minister may notify the Authority in writing that capacity in the broadcasting service bands is to be reserved for a specified number of—

(a) national broadcasting services; or

(b) community broadcasting services; or

(c) commercial broadcasting services; or

(d) broadcasting services provided by a public broadcaster;

but such a notice must not affect the provision of services in accordance with a licence already issued under this Act, or services already being provided by a public broadcaster.

(2) The Authority shall not allow the provision of broadcasting services (other than services provided by public broadcasters or community broadcasting licensees) which would make use of reserved capacity in the broadcasting service bands.

(3) The Minister may direct the Authority to allocate any broadcasting service bands reserved in terms of subparagraph (1)(d) to a public broadcaster.

Alternative uses of broadcasting service bands

10. (1) If—

(a) the Authority has advertised under this Act for applications for the allocation of one or more commercial broadcasting service licences and that licence is not allocated or not all of those licences are allocated; or

(b) broadcasting service bands are available in a licence area but have not been made available for commercial television broadcasting licences or commercial radio broadcasting licences; or

(c) broadcasting service bands have been reserved under paragraph 9 but have not been made available for the purpose for which they were reserved; or

(d) broadcasting service bands are available but the Authority has not commenced or completed planning and allocation processes in relation to those bands;

the Authority may, by notice published in the Gazette, determine that the band or bands concerned is or are available for allocation, for a period specified by the Authority—

(i) for the temporary transmission or the re-transmission of programmes; or

(ii) to community broadcasting licensees; or

(iii) to providers of subscription broadcasting services, subscription narrowcasting services or open narrowcasting services; or

(iv) for the transmission of datacasting services; or

(v) for other broadcasting purposes.

(2) In making a determination under subparagraph (1), the Authority shall have regard to—

(a) the possible future demand for the use of the broadcasting service bands concerned; and

(b) such other matters as the Authority considers relevant.

(3) The Authority may, by notice published in the Gazette, determine that broadcasting service bands are available for allocation for the purposes of the transmission of datacasting services.

(4) In making a determination under subparagraph (3), the Authority shall have regard to—

(a) the possible future demand for the use of the broadcasting service bands concerned for the provision of commercial television broadcasting services; and

(b) such other matters as the Authority considers relevant.

Second Schedule (Section 3 (4))

ANCILLARY POWERS OF AUTHORITY

1. To acquire by lease, purchase, or otherwise, immovable property and

to construct buildings thereon.

2. To buy, take in exchange, hire or otherwise acquire movable property, including vehicles, necessary or convenient for the performance of its functions.

3. To maintain, alter and improve property acquired by it.

4. To mortgage or pledge any assets or part of any assets and, with the approval of the Minister, to sell, exchange, let, dispose of, turn to account or otherwise deal with any assets or part of any assets which are not required for the exercise of its functions for such consideration as the Authority may, with the approval of the Minister, determine.

5. To open bank and building society accounts in the name of the Authority and to draw, make, accept, endorse, discount, execute and issue for the purposes of its functions, cheques, promissory notes, bills of exchange, bills of lading, securities and other instruments.

6. To insure against losses, damages, risks and liabilities which it may incur.

7. To enter into contracts and suretyships or give guarantees in connection with the exercise of its functions and to modify or rescind such contracts or rescind suretyships or guarantees.

8. With the approval of the Minister, to enter into, renew, cancel or abandon arrangements with any government or authority, local or otherwise, that may seem conducive to the exercise of its functions or any of them and to obtain from such government or authority rights, privileges and concessions which the Authority thinks desirable to obtain and carry out, exercise and comply with such arrangements, rights, privileges and concessions.

9. With the approval of the Minister, to raise loans or borrow money in such amounts and for such purposes and under such conditions as may be approved by the Minister.

10. To employ, upon such terms and conditions as the Authority may think fit, such persons as may be necessary for conducting its affairs, and suspend or discharge any such persons.

11. Subject to section 39 of the Audit and Exchequer Act [Chapter 22:03], to pay such remuneration and allowances and grant such leave of absence and to make such gifts and pay such bonuses and the like to its employees as the Authority thinks fit.

12. To provide pecuniary benefits for its employees on their retirement, resignation, discharge or other termination of service or in the event of their sickness or injury and for their dependants, and for that purpose to effect policies of insurance, establish pension or provident funds or make such other provision as may be necessary to secure for its employees and their dependants any or all of the pecuniary benefits to which this paragraph relates.

13. With the approval of the Minister, to purchase, take in exchange, hire and otherwise acquire land or dwellings for use or occupation by its employees.

14. To construct dwellings, outbuildings or improvements for use or occupation by its employees on land purchased, taken in exchange, hired or otherwise acquired by the Authority.

15. To sell or let dwellings and land for residential purposes to its employees.

16. With the approval of the Minister, to guarantee loans to its employees or their spouses for the purchase of dwellings or land for residential purposes, the construction of dwellings and the improvement of dwellings or land which are the property of its employees or their spouses.

17. To provide security in respect of loans guaranteed in terms of paragraph 16 by the deposit of securities.

18. With the approval of the Minister, to make loans to any employee of the Authority—

(a) for the purpose of purchasing vehicles, tools or other equipment used by him in carrying out his duties; or

(b) not exceeding three months' salary or wages payable to him, for any purpose;

on such security as the Authority considers adequate.

19. To do anything for the purpose of improving the skill, knowledge or usefulness of its employees, and in that connection to provide or assist other persons in providing facilities for training, education and research and to pay for the aforesaid, where necessary.

20. To provide such services as the Authority considers could properly be provided by it.

21. With the approval of the Minister, to provide financial assistance to any person, association, organisation or institution whose activities are such as to be, in the opinion of the Authority, of benefit to the Authority.

22. Generally, to do all such things as may be necessary, conducive or incidental to the exercise of the powers and the performance of the functions of the Authority under this Act or any other enactment.

Third Schedule (Section 4 (4))

PROVISIONS APPLICABLE TO BROADCASTING AUTHORITY OF ZIMBABWE BOARD

Terms of office and conditions of service of members

1. (1) Subject to this Schedule, a member shall hold office for a term of five years.
[amended by Act 6/2003 with effect from the 19th September, 2003.]

(2) A member shall continue in office after the expiry of his term until he has been re-appointed or his successor has been appointed:

Provided that a member shall not hold office in terms of this subparagraph for longer than six months.

(3) Subject to paragraph 10, a member shall hold office on such terms and conditions as the Minister may fix in relation to members generally.

(4) A retiring member is eligible for re-appointment as a member:

Provided that no member may be re-appointed for a third term in office.
[Proviso inserted by Act 6/2003 with effect from the 19th September, 2003.]

(5) The terms and conditions of office of a member shall not, without the member's consent, be altered to his detriment during his tenure of office.

Disqualifications for appointment as member

2. (1) The Minister shall not appoint a person as a member and no person shall be qualified to hold office as a member who—

(a) is not a citizen of Zimbabwe; or

(b) has a financial interest in any business connected with broadcasting services or systems, or is engaged in any activity connected with any such service or system, or is married or connected to or associated with a person who has such an interest or is engaged in such an activity, unless the Minister is satisfied that the interest or activity will not interfere with the person's impartial discharge of his duties as a member; or

(c) has, in terms of a law in force in any country—

(i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or

(ii) made an assignment to, or arrangement or composition with, his creditors which has not been rescinded or set aside;

or

(d) has, within the period of five years immediately preceding the date of his proposed appointment, been convicted—

(i) in Zimbabwe, of an offence; or

(ii) outside Zimbabwe, in respect of conduct which, if committed in Zimbabwe, would constitute an offence;

and sentenced to a term of imprisonment exceeding six months imposed without the option of a fine, whether or not any portion has been suspended, and has not received a free pardon.

(2) A person who is —

(a) a member of Parliament; or

(b) a member of two or more other statutory bodies;

shall not be appointed as a member of the Authority, nor shall he be qualified to hold office as a member.

(3) For the purposes of subparagraph (b) of subparagraph (2) a person who is appointed to a council, board or other authority which is a statutory body or which is responsible for the administration of the affairs of a statutory body shall be regarded as a member of that statutory body.

Vacation of office by member

3. A member shall vacate his office and his office shall become vacant—

(a) three months after the date upon which he gives notice in writing to the Minister of his intention to resign, or on the expiry of such other period of notice as he and the Minister may agree; or

(b) on the date he begins to serve a sentence of imprisonment imposed without the option of a fine—

(i) in Zimbabwe, in respect of an offence; or

(ii) outside Zimbabwe, in respect of conduct which, if committed in Zimbabwe, would constitute an offence;

or

(c) if he becomes disqualified in terms of subparagraph (a), (b) or (c) of subparagraph (1) of paragraph 2, or in terms of subparagraph (2) of that paragraph, to hold office as a member; or

(d) if he is required in terms of paragraph 4 to vacate his office.

Dismissal of Board

4. (1) Subject to subparagraph (2), if the Minister considers that—

(a) the Board has contravened this Act or any other law and has failed to rectify the contravention within a reasonable time after being required to do so by the Minister; or

(b) whether through disagreements amongst its members or otherwise, the Board is unable to carry out any of its functions in terms of this Act;

and that it is in the national interest to do so, the Minister may, by written notice to the chairman copied to the chief executive of the Authority, dismiss all the members of the Board, and their offices shall become vacant as soon as the chairman receives the notice, and the Minister shall table a report on the matter in the House within the next 14 days on which Parliament sits after the dismissal.

(2) Before dismissing all the members in terms of subparagraph (1), the Minister shall consult the President and act in accordance with any directions the President may give him.

[Paragraph 4 substituted by Act 6/2003 with effect from the 19th September, 2003.]

Filling of vacancies on Board

5. On the death of, or vacation of office by, a member, the Minister may appoint a qualified person to fill the vacancy:

Provided that if as a result of the vacancy the number of members falls below the minimum number specified in section four, the Minister shall fill the vacancy within three weeks.

Chairman and vice-chairman of Board

6. (1) The Minister shall designate one of the members as chairman of the Board and another member as vice-chairman of the Board.

(2) The vice-chairman of the Board shall perform the chairman’s functions whenever the chairman is for any reason unable to perform them.

(3) The chairman or vice-chairman of the Board may at any time resign his office as

such by one month's notice in writing to the Minister.
(4) Whenever the office of chairman or vice-chairman of the Board falls vacant, the Minister shall fill the vacancy within three weeks.

Meetings and procedure of Board

7. (1) The Board shall hold its first meeting on such date and at such place as the Minister may fix, being not more than three months after the date of commencement of this Act, and thereafter the Board shall meet for the dispatch of business as often as is necessary or expedient and, subject to this paragraph, may adjourn, close and otherwise regulate its meetings and procedure as it thinks fit:
Provided that the Board shall meet not less than six times in each year.
(2) The chairman of the Board—
(a) may at any time convene a special meeting of the Board; and
(b) shall convene a special meeting of the Board on the written request of—
(i) the Minister, within such period as the Minister may specify; or
(ii) not fewer than two members, not later than fourteen days after his receipt of such request.
(3) Written notice of any special meeting convened in terms of subparagraph (2) shall be sent to each member not later than seven days before the meeting and shall specify the business for which the meeting has been convened:
Provided that if, in the opinion of the chairman or Minister, as the case may be, the urgency of the business for which the meeting is to be convened so requires, notice of not less than forty-eight hours may be given.
(4) No business shall be discussed at a special meeting convened in terms of subparagraph (2) other than—
(a) such business as may be determined by the chairman of the Board, where the chairman of the Board has convened the meeting in terms of paragraph (a) of subparagraph (2); or
(b) the business specified in the request for the meeting, where the chairman of the Board has convened the meeting in terms of paragraph (b) of subparagraph (2).
(5) The chairman or, in his absence, the vice-chairman shall preside at all meetings of the Board:
Provided that, if the chairman and the vice-chairman are both absent from a meeting of the Board, the members present may elect one of their number to preside at that meeting as chairman.
(6) Five members shall form a quorum at any meeting of the Board.
(7) All acts, matters or things authorised or required to be done by the Board may be decided by a majority vote at a meeting of the Board at which a quorum is present.
(8) With the approval of the other members, the chairman may invite any person to attend a meeting of the Board or of a committee, where the chairman considers that the person has special knowledge or experience in any matter to be considered by the Board or the committee, as the case may be, at that meeting.
(9) A person invited to attend a meeting of the Board or a committee in terms of subparagraph (8) may take part in the proceedings of the Board or the committee as if he were a member thereof, but shall not have a vote on any question before the Board or committee, as the case may be.
(10) Subject to paragraph 10, at all meetings of the Board each member present shall have one vote on each question before the Board and, in the event of an equality of votes, the chairman shall have a casting vote in addition to a deliberative vote.
(11) Any proposal circulated among all members and agreed to in writing by a majority of all members shall have the same effect as a resolution passed at a duly constituted meeting of the Board and shall be incorporated in the minutes of the next succeeding meeting of the Board:
Provided that, if a member requires that such proposal be placed before a meeting of

the Board, this subparagraph shall not apply to such proposal.

Committees of Board

8. (1) For the better exercise of its functions, the Board may establish one or more committees in which it may vest such of its functions as it thinks fit:

Provided that the vesting of a function in a committee shall not prevent the Board from itself exercising that function, and the Board may amend or rescind any decision of the committee in the exercise of that function.

(2) On the establishment of a committee, the Board may appoint to the committee persons who are not members of the Board.

(3) The chairman of the Board or a committee may at any reasonable time and place convene a meeting of that committee.

(4) The procedure of each committee shall be as fixed from time to time by the Board.

(5) Subject to this paragraph, subparagraphs (2) to (7) and (10) and (11) of paragraph 7 shall apply, mutatis mutandis, to committees and their members as they apply to the Board and its members.

Remuneration and expenses of members

9. Members of the Board shall be paid—

(a) such remuneration, if any, as the Minister, may from time to time fix for members generally; and

(b) such allowances, if any, as the Minister, may from time to time fix to meet any reasonable expenses incurred by members in connection with the business of the Board.

Members to disclose certain connections and interests

10. (1) In this paragraph—

"relative", in relation to a member, means the member's spouse, child, parent, brother or sister.

(2) Subject to subparagraph (4)—

(a) if a member of the Board—

(i) knowingly acquires or holds a direct or indirect pecuniary interest in any matter that is under consideration by the Board; or

(ii) owns any property or has a right in property or a direct or indirect pecuniary interest in a company or association of persons which results in the member's private interests coming or appearing to come in to conflict with his functions as a member; or

(iii) knows or has reason to believe that a relative of his—

A. has acquired or holds a direct or indirect pecuniary interest in any matter that is under consideration by the Board; or

B. owns any property or has a right in property or a direct or indirect pecuniary interest in a company or association of persons which results in the member's private interests coming or appearing to come in to conflict with his functions as a member;

or

(b) if for any reason the private interests of a member come into conflict with his functions as a member;

the member shall forthwith disclose the fact to the Board.

(3) A member referred to in subparagraph (2) shall take no part in the consideration or discussion of, or vote on, any question before the Board which relates to any contract, right, immovable property or interest referred to in that subparagraph.

(4) Any person who contravenes subparagraph (2) or (3) shall be liable to dismissal.

Validity of decisions and acts of Board

11. No decision or act of the Board or act done under the authority of the Board shall be invalid on the ground that—

(a) the Board consisted of fewer than the minimum number of persons prescribed in subsection (2) of section four; or

(b) a disqualified person acted as a member of the Board at the time the decision was taken or act was done or authorised:

Provided that the Board shall ratify any such decision or action as soon as possible after it becomes aware that the decision or action was taken in the circumstances described in subparagraph (a) or (b).

Minutes of proceedings of Board

12. (1) The Board shall cause minutes of all proceedings of and decisions taken at every meeting of the Board to be entered in books kept for the purpose.

(2) Any minutes referred to in subparagraph (1) which purport to be signed by the chairman of the meeting to which the minutes relate or by the chairman of the next following meeting of the Board or the committee concerned, as the case may be, shall be accepted for all purposes as prima facie evidence of the proceedings of and decisions taken at the meeting concerned.

(3) The Board shall cause copies of all minutes that have been signed as provided in subparagraph (2) to be sent without delay to the Minister for his information.

Fourth Schedule (Section 5)

FINANCIAL AND MISCELLANEOUS PROVISIONS RELATING TO AUTHORITY

PART I

FINANCIAL PROVISIONS

Funds of Authority

1. The funds of the Authority shall consist of—

(a) fees, charges and other income accruing to the Authority from licences issued and other things done by it in terms of this Act; and

(b) the proceeds of any monetary penalties imposed by the Authority in terms of subsection (9) of section twenty-four; and

(c) such moneys as may be payable to the Authority from moneys appropriated for the purpose by Act of Parliament; and

(d) such other moneys as may vest in or accrue to the Authority, whether in the course of its operations or otherwise.

Financial year of Authority

2. The financial year of the Authority shall be the period of twelve months ending on the 31st December in each year.

Surplus funds of Authority to be appropriated to Broadcasting Fund

3. Any surplus of income over expenditure at the end of the Authority's financial year, less an amount to be retained by the Authority to cover its estimated recurrent expenses for the following six months, shall be appropriated to the Broadcasting Fund established by section twenty-nine.

Accounts of Authority

4. (1) The Board shall ensure that proper accounts and other records relating to such accounts are kept in respect of all the Authority's activities, funds and property, including such particular accounts and records as the Minister may direct.

(2) Not later than three months after the end of each financial year of the Authority, the Authority shall prepare and submit to the Minister a statement of accounts in respect of that financial year or such other period as the Minister may direct.

Audit of Authority's accounts

5. (1) Subject to the Audit and Exchequer Act [Chapter 22:03], the Authority shall appoint as auditors one or more persons approved by the Minister who are registered as public auditors in terms of the Public Accountants and Auditors Act [Chapter 27:12].

(2) The accounts kept by the Authority in terms of subparagraph (1) of paragraph 4 shall be examined by the auditors appointed in terms of subparagraph (1).

(3) The auditors appointed in terms of subparagraph (1) shall make a report to the Board and the Minister on the statement of accounts prepared in terms of subparagraph (2) of paragraph 4 and such report shall state whether or not in their

opinion the statement of accounts gives a true and fair view of the Authority's affairs.
(4) In addition to the report referred to in subparagraph (3), the Minister may require the Board to obtain from its auditors appointed in terms of subparagraph (1) such other reports, statements or explanations in connection with the Authority's operations, funds and property as the Minister may consider expedient, and the Board shall forthwith comply with any such requirement.

Powers of auditors

6. (1) An auditor referred to in paragraph 5 shall be entitled at all reasonable times to require to be produced to him all accounts and other records relating to such accounts which are kept by the Authority or its agents and to require from any member of the Board or employee or agent of the Authority such information and explanations as in the auditor's opinion are necessary for the purposes of his audit.
(2) Any member of the Board or employee or agent of the Authority who fails without just cause to comply with a requirement of an auditor in terms of subparagraph (1) shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.
[amended by Act 22 of 2001, gazetted on the 1st February, 2002]

PART II

MISCELLANEOUS PROVISIONS RELATING TO AUTHORITY

Execution of contracts and instruments by Authority

7. Any agreement, contract or instrument approved by the Board may be entered into or executed on behalf of the Authority by any persons generally or specially authorised by the Board for that purpose.

Reports of Authority

8. (1) In addition to any report which the Authority is required to submit to the Minister in terms of this Act or the Audit and Exchequer Act [Chapter 22:03], the Authority—

(a) shall submit to the Minister such other reports as the Minister may require; and

(b) may submit to the Minister such other reports as the Authority considers advisable;

in regard to the operations and property of the Authority.
(2) The Minister shall, within six months of the end of the Authority's financial year, lay before Parliament a report submitted to him by the Authority in terms of subparagraph (1), together with the statement of accounts and auditor's report for the preceding financial year of the Authority referred to in paragraphs 4 and 5.

Chief Executive and other employees of Authority

9. (1) For the better exercise of the functions of the Authority the Board may, in consultation with the Minister, appoint a person to be the Chief Executive of the Authority, on such terms and conditions as the Board, with the approval of the Minister, may fix.
(2) The Board shall terminate the appointment of the Chief Executive if he would be required in terms of paragraph (b) or (c) of paragraph 3 of the Third Schedule to vacate his office had that paragraph and paragraphs (a), (b) and (c) of subparagraph (1) of paragraph 2 of the Third Schedule, and subparagraph (2) of that paragraph, applied to him.
(3) The Board shall not terminate the services of the Chief Executive on a ground other than one referred to in subparagraph (2) without the approval of the Minister.
(4) The Board shall employ such persons in addition to the Chief Executive as it considers expedient for the better exercise of the functions of the Authority.
(5) Subject to the general control of the Board, the Chief Executive shall be responsible for—

(a) managing the operations and property of the Authority; and

(b) supervising and controlling the activities of the employees of the

Authority in the course of their employment.
(6) The Board may assign to the Chief Executive such of the functions of the Board as the Board thinks fit:
Provided that the Board shall not assign to the Chief Executive any duty that has been assigned to the chairman of the Board.
(7) Any assignment of functions in terms of subparagraph (6) may be made either generally or specially and subject to such reservations, restrictions and exceptions as the Board may determine, and may be revoked by the Board at any time.
(8) The Chief Executive shall have the right to attend meetings of the Board and, except in the case of any discussion relating to the terms and conditions of his appointment, to take part in the proceedings of the Board as if he were a member, but shall not have a vote on any question before the Board.

Fifth Schedule (Section 11 (1) (b))

STANDARD CONDITIONS OF LICENCES

PART I

INTERPRETATION

Definitions

1. In this Schedule—
"election" means an election to Parliament or a local authority or the office of the President, and includes a referendum;
"election advertisement" in relation to an election, means—
(a) an advertisement—
(i) that contains election matter relating to that election; and
(ii) in respect of the broadcasting of which the relevant licensee has received or is to receive, directly or indirectly, any money or other consideration; or
(b) an announcement containing a statement to the effect that a programme that is to be or has been broadcast is or was sponsored by a person or persons and indicating that the person is a candidate, or one or more of the persons is or are candidates, at the election; or
(c) an announcement containing a statement to the effect that a programme that is to be or has been broadcast is or was sponsored by a particular political party where a candidate at the election belongs to that party;
"election matter", in relation to an election, means matter of any of the following kinds—
(a) matter commenting on, or soliciting votes for, a candidate at the election;
(b) matter commenting on, or advocating support of, a political party to which a candidate at the election belongs;
(c) matter commenting on, stating or indicating any of the matters being submitted to the electors at the election or any part of the policy of a candidate at the election or of the political party to which a candidate at the election belongs;
(d) matter referring to a meeting held or to be held in connection with the election;
"election period", in relation to an election for the office of President or for Parliament, or a referendum, means the period that starts thirty-three days before the polling day for the election and ends at the close of the polling day or last polling day, as the case may be;
"medicine" means a medicine within the meaning of the Medicines and Allied Substances Control Act [Chapter 15:03];
"person" includes a political party, whether incorporated or unincorporated;
"political matter" means any political matter, including the policy launch of a political party;
"referendum" means the submission to the electors of a proposed matter or law whether or not the proposal to make the submission has been announced;
"relevant period", in relation to an election, means the period that commences four

days before the polling day for the election and ends at the close of the poll on the last polling day;

"required particulars", in relation to a political matter that is broadcast, means—

(a) if the broadcasting was authorised by a political party—

(i) the name of the political party; and

(ii) the town, city or suburb in which the principal office of the political party is situated; and

(iii) the name of the natural person responsible for giving effect to the authorisation;

and

(b) if the broadcasting of the political matter was authorised by a person other than a political party—

(i) the name of the person who authorised the broadcasting of the political matter; and

(ii) the town, city or suburb in which the person lives or, if the person is a corporation or association, in which the principal office of the person is situated;

and

(c) the name of every speaker who, either in person or by means of a sound recording device, delivers an address or makes a statement that forms part of that matter;

"required period", in relation to the keeping of a record in relation to political matter, means—

(a) subject to paragraph (b), the period of six weeks commencing on the day on which the matter was broadcast; or

(b) if the matter relates to an election and was broadcast during the election period in relation to the election, the period commencing on the day on which the matter was broadcast and ending—

(i) at the end of the period referred to in paragraph (a); or

(ii) if that period ends before the end of the election period in relation to the election, the day on which that election period ends;

or such longer period as the Authority, before the end of that period, directs by notice published in the Gazette to the broadcaster concerned.

PART II

CONDITIONS RELATING TO POLITICAL MATTERS AND MEDICINES

Broadcasting of political matter

2. (1) If, during an election period, a broadcaster broadcasts election matter, the broadcaster shall give reasonable and equal opportunities for the broadcasting of election matter to all political parties contesting the election.

(2) This paragraph does not require a broadcaster to broadcast any matter free of charge.

Broadcasting of election advertisements

3. (1) If an election is to be held and—

(a) a broadcaster has a licence that has a licence area; and

(b) the licence area overlaps, contains or is contained in the area of Zimbabwe to which the election relates;

the broadcaster shall not broadcast an election advertisement in relation to the election during the relevant period.

(2) If an election is to be held and—

(a) a broadcaster has a licence that does not have a licence area; and

(b) the broadcasting service under the licence is normally received in the area of Zimbabwe to which the election relates;

the broadcaster shall not broadcast an election advertisement in relation to the election during the relevant period as part of that service.

Identification of certain political matter

4. (1) If a broadcaster broadcasts political matter at the request of another person,

the broadcaster must, immediately afterwards, cause the required particulars in relation to the matter to be announced in a form approved in writing by the Authority.

(2) A broadcaster must, in relation to political matter broadcast at the request of another person, keep a record of the name, address and occupation of the person or, if the person is a company, the name and the address of the principal office of the person for the required period and must give to the Authority any particulars of the record that the Authority, by written notice, requires.

(3) For the purposes of this paragraph, a person authorises the broadcasting of political matter only if the person is responsible for approval of the content of the political matter and the decision to present it for broadcasting.

Records of matter broadcast

5. (1) If a broadcaster broadcasts matter relating to a political subject or current affairs, being matter that is in the form of news, an address, a statement, a commentary or a discussion, the broadcaster must cause a record of the matter to be made in a form approved in writing by the Authority.

(2) Subject to this paragraph, a broadcaster must retain in his or her custody a record so made for a period of—

(a) six weeks from the date on which the matter was broadcast; or

(b) if a complaint has been made about the matter, for sixty days from the date on which the matter was broadcast;

or for such longer period as the Authority, in special circumstances, directs in writing.

(3) If a person considers that a record so made is admissible in evidence in proceedings instituted, or proposed to be instituted, in a court, being a record that is held under subparagraph (2), the person may give to the broadcaster a notice in writing informing the broadcaster that the record may be required for the purposes of the proceedings.

(4) If such a notice is given to a broadcaster in respect of a record, the broadcaster must, subject to this paragraph, retain the record until the proceedings or the proposed proceedings to which the notice relates have been finally determined.

(5) If the proceedings are not instituted within a period of three months after the notice is given to the broadcaster, subparagraph (4) ceases to apply to the record at the end of that period.

(6) The obligation imposed by this paragraph on a broadcaster to retain a record does not apply at any time when the record is in the custody of a court in connection with proceedings instituted in the court.

(7) If the Authority is of the opinion that a matter of which a record has been made under this paragraph is of sufficient historic interest to justify its being permanently preserved, the Authority may direct in writing a person who has custody of the record to deliver it for safe keeping to a person or Authority specified by the Authority, and the person to whom the direction is given shall comply with the direction subject to his entitlement to fair compensation.

(8) A broadcaster must, without charge, make available to the Authority, upon request, any specified record made by the broadcaster under subparagraph (2) that has been retained by the broadcaster (whether or not the broadcaster is, at the time of the request, under an obligation to retain the record).

Advertisements relating to medicines

6. (1) In this paragraph "broadcaster" means—

(a) a commercial television broadcasting licensee; or

(b) a commercial radio broadcasting licensee; or

(c) a subscription television broadcasting licensee.

(2) A broadcaster must not broadcast an advertisement relating to a medicine unless the text of the proposed advertisement has been approved—

(a) by the Secretary for Health and Child Welfare under subparagraph (3); or

(b) by the Minister on appeal to the Minister under this paragraph.

(3) A person may apply, in writing, to the Secretary for Health and Child Welfare for approval of the text of a proposed advertisement relating to a medicine.
(4) If an application is made, the Secretary for Health and Child Welfare may, in writing, approve or disapprove the text.
(5) The Secretary for Health and Child Welfare shall give the applicant written notice of the approval or disapproval.
(6) If—
(a) an application is made under subparagraph (2); and
(b) the Secretary for Health and Child Welfare does not notify the applicant of the Secretary's approval or disapproval of the text within sixty days after the day on which the application was made;
the Secretary is taken to have approved the text under subparagraph (3) at the end of that period.
(7) The Secretary for Health and Child Welfare may, by signed instrument, delegate his or her power under this paragraph to approve the text of an advertisement to—
(a) a government medical officer; or
(b) the Medicines Control Authority of Zimbabwe or any other body.
(8) An applicant may appeal in writing to the Minister from a decision of the Secretary for Health and Child Welfare under this paragraph, and the Minister must decide the appeal within a reasonable period.

No broadcasting of false or misleading news

7. No licensee shall broadcast any matter that contains any false or misleading news.

No broadcasting of commercials containing political matter

8. A broadcaster shall not broadcast a commercial advertisement that contains any political matter.

PART III

COMMERCIAL BROADCASTING LICENCES

Standard conditions of commercial broadcasting licences

9. (1) Each commercial television broadcasting licence is subject to the following conditions—
(a) the articles of association of the licensee will at all times contain provisions under which—
(i) a person is not eligible to continue to be the holder of shares in the licensee if, because of holding those shares and of any other relevant circumstances, that or some other person would contravene this Act; and
(ii) the licensee may secure the disposal of shares held by a person to the extent necessary to prevent a contravention of this Act continuing or of shares held by a person who refuses or fails to provide a statutory declaration referred to in subparagraph (iii) or (iv); and
(iii) a person who becomes the holder of shares in the licensee is required to provide to the company a statutory declaration stating whether the shares are held by the person beneficially and, if not, who has beneficial interests in the shares and stating whether the person, or any person who has a beneficial interest in the shares, is in a position to exercise control of another licence, and giving particulars of any such position; and
(iv) a person holding shares in the licensee may be required by the licensee, from time to time, to provide to the licensee statutory declarations concerning matters relevant to his or her eligibility to continue to be the holder of those shares having regard to the provisions of this Act; and
(v) any election of directors to the board of the licensee is notified to the Authority;
(b) the licensee will, if the Minister, by notice in the Gazette, so requires, broadcast, without charge, such items of national interest as are specified in the notice;
(c) the licensee will, if the Minister notifies the licensee in writing that an

emergency has arisen which makes it important in the public interest that persons authorised by the Minister have control over matter for broadcast using the licensee's broadcasting facilities, allow those persons access to and control over those facilities;

(d) the licensee will not broadcast a programme that has been refused classification, or has been prohibited under the Censorship and Entertainments Control Act [Chapter 10:04];

(e) the licensee will not use the broadcasting service in the commission of an offence in contravention of any law of Zimbabwe;

(f) the licensee will commence to provide broadcasting services within six months of being allocated the licence or within such longer period as is notified in writing by the Authority;

(g) the licensee will provide a service that, when considered together with other broadcasting services available in the licence area of the licence (including another service operated by the licensee), contributes to the provision of an adequate and comprehensive range of broadcasting services in that licence area.

PART IV

COMMUNITY BROADCASTING

Additional conditions of community broadcasting licences

10. (1) Each community broadcasting licence is subject to the following conditions—

(a) the licensee shall not broadcast any political matter;

(b) the licensee shall continue to represent the community interest that it represented at the time when the licence was allocated;

(c) the licensee shall encourage members of the community that it serves to participate in—

(i) the operations of the licensee in providing the service; and

(ii) the selection and provision of programmes under the license;

(iii) the membership of its governing body.

(2) A community broadcasting licensee may broadcast sponsorship announcements that run in total for not more than four minutes in any hour of broadcasting.

(3) A community television broadcasting licensee may broadcast sponsorship announcements only during periods before programmes commence, after programmes end or during natural programme breaks.

(4) In calculating the length of time dedicated to the broadcasting of sponsorship announcements, the following shall not be included—

(a) material that promotes the licensee's products, services or activities for the broadcast of which the licensee does not receive any consideration in cash or in kind;

(b) material that publicises programmes to be broadcast by the licensee;

(c) community information or promotional material for broadcast for which the licensee does not receive any consideration in cash or in kind-

["for" inserted by the Editor after " broadcast"];

(d) sponsorship announcements consisting of moving text that is overlaid on a test pattern.

Sixth Schedule (Section 11(3))

LOCAL CONTENT CONDITIONS

Definitions

1. In this Schedule—

"music from Africa" means music that is produced and performed by persons from the African continent and is lawfully available in Zimbabwe;

"performance period" means the period between 0500 hours and 2300 hours every day;

"prime time" means the period between 1800 hours and 2200 hours every day.

Television broadcasting licences

2. (1) A television broadcasting licensee must ensure that within two years of this

Act coming into effect (in the case of a person lawfully providing a broadcasting service immediately before that date) or immediately upon the issue of the licence, or within such period as the Authority may determine, at least seventy-five per centum of its programming content (including repeats) in every week during the following periods—

(a) the performance period, not including prime time; and

(b) prime time; and

(c) any period before or after the performance period;

consists of local television content and material from Africa.

(2) Where a licensee provides a broadcasting service which has more than one channel, that licensee must ensure that in each and every week of the year, at least thirty per centum of the programming on each channel during the performance period, and during prime time, consists of local television content.

(3) In complying with its obligations in terms of subparagraphs (1) and (2) a licensee must ensure that at least—

(a) seventy per centum of its drama programming consists of Zimbabwean drama;

(b) eighty per centum of its current affairs programming consists of Zimbabwean current affairs;

(c) seventy per centum of its social documentary programming consists of Zimbabwean social documentary programming;

(d) seventy per centum of its informal knowledge-building programming consists of Zimbabwean informal knowledge-building programming;

(e) eighty per centum of its educational programming consists of Zimbabwean educational programming;

(f) eighty per centum of its children's programming consists of Zimbabwean educational programming.

Subscription television broadcasting licensees

3. (1) A subscription television broadcasting licensee shall ensure that, in each and every week of the year, at least thirty per centum of its programming, or some greater proportion as may be determined by the Authority, taking into account the nature of the service during encoded broadcasts in the performance period, consists of local television content within such programme categories as the Authority may determine.

(2) Where a portion of the broadcasting service of a subscription television broadcasting licence is unencoded, then for the duration of that unencoded portion, it must ensure that in each and every week of the year at least fifty per centum of its programming, including repeats, consists of local television content within such programme categories as may be determined by the Authority.

Independent television production

4. Television broadcasting licensees and subscription television broadcasting licensees must ensure that at least forty per centum of their local television content programming consists of programmes which are independent television productions and the independent television productions are spread reasonably evenly between Zimbabwean drama, Zimbabwean social documentary, Zimbabwean informal knowledge-building, Zimbabwean children's and Zimbabwean educational programming.

Radio broadcasting licences

5. Every week during the performance period a radio broadcasting licensee shall ensure that within six months of this Act coming into effect, (in the case of a person lawfully providing a radio broadcasting service immediately before that date) or immediately upon the issue of a licence or within such longer period as the Authority may determine, at least—

(a) seventy-five per centum of the music broadcast consists of Zimbabwean music;

(b) ten per centum of the music broadcast consists of music from Africa.

Subscription radio broadcasting licensees

6. A subscription radio broadcasting licensee shall ensure that, in every week of the year—

(a) at least thirty per centum of the music broadcast during the performance period consists of Zimbabwean music; and

(b) at least ten per centum of the music broadcast consists of music from Africa; and

(c) where a portion of a subscription radio broadcasting service is unencoded, then for the duration of that unencoded portion, at least seventy-five per centum of the music broadcast is Zimbabwean music and at least ten per centum of the music broadcast is music from Africa.

Minister may prescribe other content conditions

7. The Minister may—

(a) after notice to the licensee concerned, prescribe other local content conditions;

(b) prescribe any longer period for the purposes of subparagraph (1) of paragraph 2 or paragraph 5.